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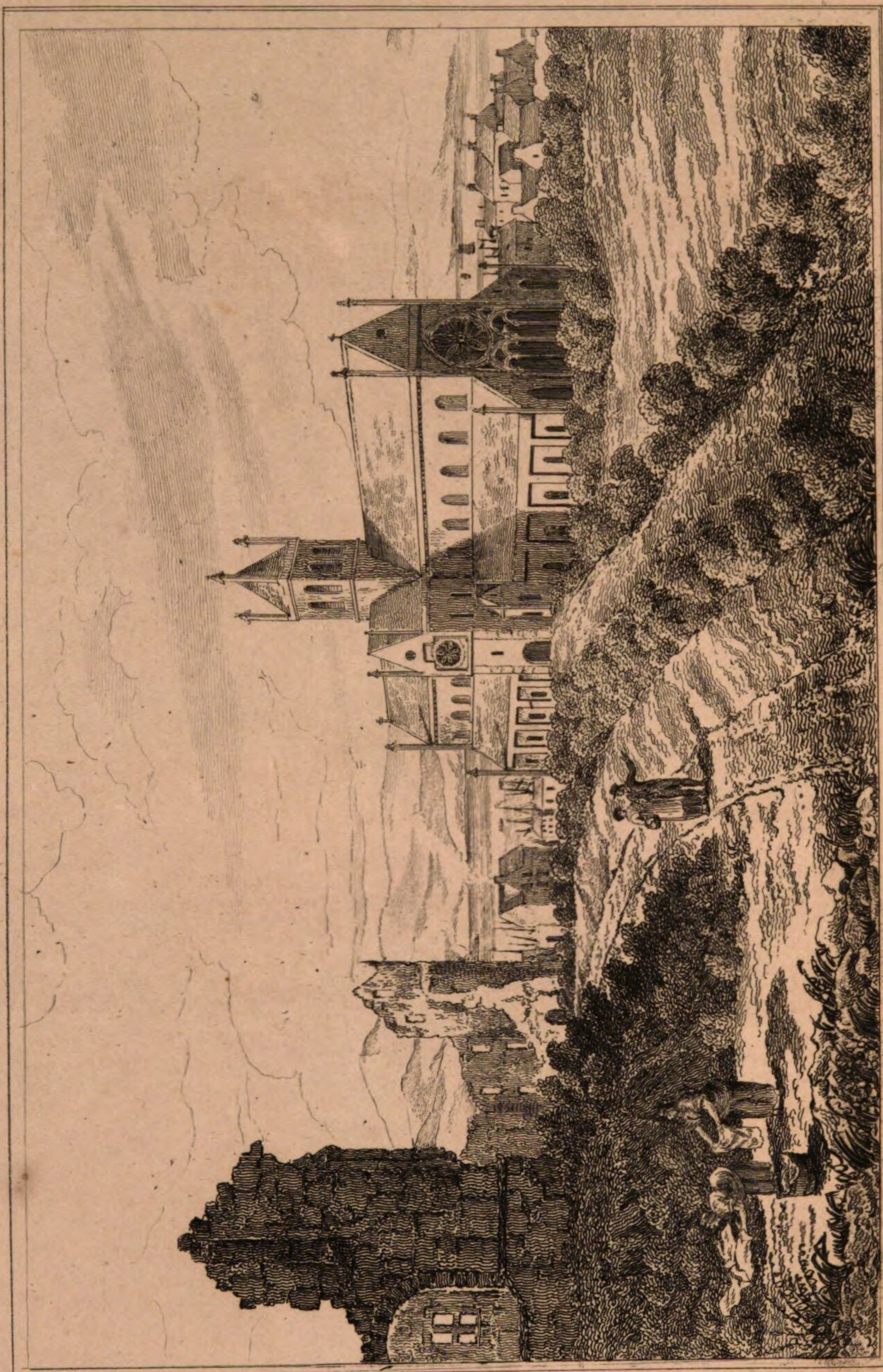
ON

ORKNEY AND ZETLAND.

NOTES

OF

ORKNEY AND SETLAND.



CATHEDRAL OF ST. MAGNUS, KIRKWALL, ORKNEY.

NOTES

ON

Orkney AND Zetland:

ILLUSTRATIVE OF

THE HISTORY, ANTIQUITIES, SCENERY,
AND CUSTOMS

OF

THOSE ISLANDS.

BY

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SHERIFF-SUBSTITUTE OF ORKNEY.

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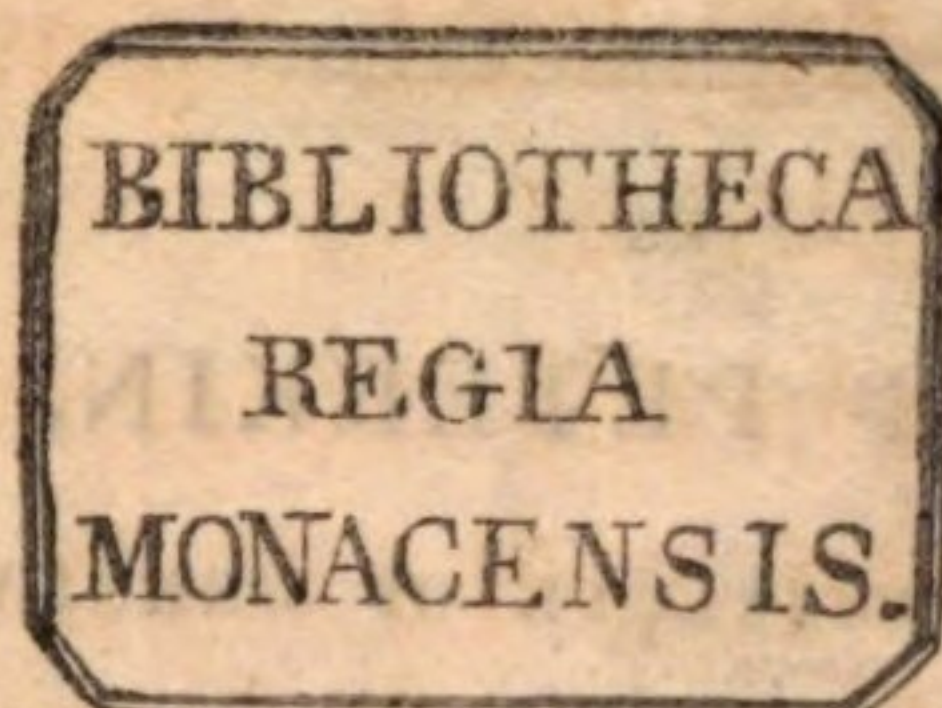
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NOTES

GERMANY AND SWITZERLAND:

THE HISTORY, ANTIQUITIES, SCENERY,
AND CUSTOMS



PREFACE.

THE recent publication of "THE PIRATE," by a deservedly popular author, has directed a good deal of public attention to the Orkney and Zetland Islands,—more, perhaps, than had ever been previously excited. It has been suggested to the author, or rather compiler of the following Notes, (for he does not aspire to any loftier name than the latter term implies,) that such a work as it is in his power to furnish would not only be interesting generally at present, but, what is of more importance, *useful* to the district with which he is officially connected; and, under this impression, he ventures to publish these *Notes*,—a title more suitable to the desultory nature of the work, and to the real interest of the subject, than that of a "History." The size, too, has been regulated by the same principle.

It may be proper to state, that the writer of these Notes has been resident in Orkney for a period of above seven years, and that, during the greater part of that time, he has devoted a considerable portion of his leisure to the investigation of every thing in that district by which its past or present condition are characterised. This has been done partly for his own gratification, and partly in the discharge of public duties. In those inquiries, he found Wallace's and Barry's Accounts of Orkney (both of these being also now scarce) unsatisfactory in many important particulars, especially with reference to the period that the islands have been annexed to Scotland. And he has attempted to supply various defects, as well as to correct imperfect views, by having recourse to original records and papers, which were either inaccessible to those writers, or were passed over by them without due attention being bestowed upon the tenor of the original documents. To the legendary era of the Northern Islands, while they were subject to the Scandinavian power, he has paid little attention.

Zetland has been included in the present volume chiefly for the purpose of supplying, in the simplest and most satisfactory manner, such additional information with regard to that cluster of the islands

as he believes has not found its way to the inhabitants through any other channel. The general reader, indeed, cannot fail to take an interest in some of the details, which exhibit in a singular state of combination, the proceedings of the Norwegian Fouds, Lawtings, and Udalmen, blended with those of the Justiciars, Sheriffs, assizes, and feuars, of Scotland; and the bigotted admirers of jury trials in civil causes, who have sometimes spoken of its continuance in those remote islands, after it expired in Scotland, without probably ever looking at the record, may perhaps find some grounds for concluding that it is not to the mere existence of jury-courts that any pre-eminent virtue is to be ascribed, but that their utility, and their consistency with justice and liberty, depends very much upon the wholesome moral and political condition of the people among whom they are established.

As to the form of the following volume, the writer does not think it of much importance. The first article, "A Visit to Orkney," was written for the purpose of enabling Mr William Daniell, of London, to select such portions of it as suited his work, "A Voyage round the Coast of Great Britain." The limited extent of the letter-press which accompanies his beautiful and most faithful deline-

ations of various scenes in Orkney, circumscribed him in printing what was supplied; and the "Visit to Orkney" is therefore now given as originally written, with such additions only as occur to be necessary. It contains incidentally such historical notices as are requisite for giving the reader a view of that part of the subject; and being combined with topographical sketches, the former are accessible in a less formidable shape than if presented by some more formal mode of arrangement. The other articles are either illustrative of that description, or, detached from it, seem curious in themselves; and the author flatters himself that the original documents with regard to Patrick, Earl of Orkney, to the last expedition of the Marquis of Montrose, and to the capture of Gow the Pirate, will be found interesting.

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VISIT TO ORKNEY—1818.

A

VISIT TO ORKNEY

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1818.

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VISIT TO ORKNEY

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1818

VISIT TO ORKNEY—1818.

CHAP. I.

WALLS—HOY.

THE ORKNEY ISLANDS are separated from Caithness by the Pentland Frith, in width about 12 miles betwixt Dunnet-head and the nearest point of Orkney land in Walls. Having resolved to visit these remote isles, I crossed the Pentland Frith, from Thurso, in an open boat, on the — day of August 1818, and landed at Aithhope, in Walls, after a short passage. The perils of this frith have been long proverbially terrific. But, at the time I passed over it to Orkney, there was nothing frightful in its appearance : a magnificent swell of “blue summer ocean,” betwixt the waves of which the boat sank occasionally so deep as to hide the land on either shore from view, and the slight appearances of smooth eddies, only exhibited the untroubled elements of danger. By accurate observation of the ebbs and flows of tide, the boatmen who are in the habit of sailing on the Pentland Frith, and

the fishing vessels which frequent it, pass through its boiling eddies and tides with safety ; and it is only by a careful attention to these particulars, that navigation among the Orkney islands is either safe or practicable. The rapidity of the tide varies considerably,—being sometimes at the rate of nine miles in the hour. Few accidents happen on this frith. The post-boat has crossed it for a period of eighty years ; and the only instance of its being lost was about three years ago, when it was run down by a ship in the frith. A decked vessel, for the conveyance of the mail and passengers is proposed to be established by an association of gentlemen connected with the county ; and if their project meet with due encouragement, it cannot fail to open up a more general and beneficial intercourse with the mainland of Scotland.

Waas, or *Walls*, the first island which I visited, derives its name from *Voes*, a Norwegian term, signifying a deep bay or inlet of the sea. It is evidently the root of many names of places in Orkney, situated on the margin of such natural harbours. Osmandvoe and Thurvo,—two of the districts in Walls, and Ronaldsvoe in South Ronaldsay, indicate this Scandinavian origin ; and the number of excellent harbours on the east side of Walls, renders the appellation of “ Voes ” peculiarly suitable. Besides Aith-hope, Kirk-hope, Orhope, and others, the fine harbour of Longhope is of great importance on the northern extremity of Scotland. During the late war,

large fleets of merchantmen assembled in it monthly, for convoys to the Continent and America. It is about four miles in length, and of various width, not in any place exceeding a mile. It is protected by the island of Flota, opposite to its mouth; the anchorage is good; and it is defended by a martello tower at each point of its entrance, and a battery upon the south side, which cost about L.20,000. The land around it has been left almost uncultivated. Nothing hitherto has been done for the improvement of the lower part of the island, which is flat and uninteresting; but it gradually rises towards the west and south sides, until it becomes, at Hoy, mountainous and wild in the highest degree.

I obtained, while at Walls, an explanation of what is meant in Orkney by the term *Town*, which, with some other vocables peculiar to the district, it may be as well to state in the outset, in order to prevent any misapprehension in the subsequent part of our progress. *A Town*, then, is a portion of ground, partly arable and partly pasture, separated generally from *the hill*, or common moor, by a massy turf dyke around the whole, (unless when bounded on any side by the sea,) and containing a greater or less number of *houses*, according to the extent of the town; each *house* being occupied by a different udaller or tenant, and each having attached to it various proportions of the arable lands,—originally, and still generally in run-ridge,—with patches of grass-land, and sometimes detached and separate pieces of ground

near the houses called *Tumails*, or little inclosures called *Quays*. The towns are of various dimensions and denominations, such as Osmondwall, an 18 penny or Urisland ; Kirbuster, a 9 penny-land; Thurvo, a 3 penny-land, and so on. These penny-lands are again divisible into smaller denominations of merks or merk-lands, farthing-lands, and cowsworths. None of these penny-lands, or other terms, indicate any definite extent of ground; and they are of different extent in different towns: But all the penny-lands, marks, or cowsworths in the same town are of equal extent; and when the lands are thrown into severalty, by processes for separating the runridge lands, and streightening marches among proprietors in any town, (which is termed a *planking*,) the mode of division is to measure the whole divisible subjects, and to assign to each heritor interested one or more portions of the arable and grass grounds, in proportion to the number of penny-lands, merks, &c. which are instructed to belong to them respectively by their title-deeds, or sufficient and unequivocal proof of the possession, if the written evidence be not conclusive. This is the uniform rule which has been acted upon in every known process of planking within the county of Orkney, as appears from the records of the Sheriff Court; and, indeed, it is the only possible way in which lands can be divided, which are intermixed by ridges, half ridges both in length and width, and cut out in the most minute and irregular shapes that it is possible to imagine. Besides the pos-

sessions *within the dyke*, the tenant or udaller of each house has the privilege of sending his cattle, sheep, and other bestial, to pasture on *the hill* in common, with liberty generally, according to the nature of his rights, to cut turf in the mosses, and to gather sea-weed from the shores for manure.

I bent my course along the cliffs on the southwestern shore of the island, which, from the house of Melsetter, at the head of Longhope, until an opening is found at Hoy-mouth, presents an uninterrupted series of the finest rock scenery I ever beheld. With the exception of a little chasm at Rackwick, the whole shore of Walls and Hoy is a lofty precipitous mass of freestone rocks,—three, four, and five hundred feet in height, and sometimes even exceeding that boldness of elevation; in some instances perpendicular and smooth, in other places rent and shivered, and broken down into huge fragments, and occasionally overhanging the deep, and frowning on the dark stormy surges of the Atlantic. The summit of these cliffs, for a distance of about fifteen miles, and indeed almost the whole island of Walls and Hoy, is clothed with heath and moss, and, except the little hamlet of Rackwick, in which there are about twenty families of fishermen, and the thinly-peopled spots round the Longhope and near Hoy-mouth, the whole scene is one of ruggedness, seclusion from the world of living men, and gloomy sterility. A few specimens of its character are presented in the sketches of “The Berry-Head,”—“The Snook,”—“Rackwick,”—and “The

Old Man of Hoy." * This last is a very remarkable pillar of rock, detached from and rising higher than the cliffs on the opposite brow of the main island. It has got its name from mariners, who have fancied that it bore a resemblance, in certain points of view, to an old man,—a resemblance, however, altogether imaginary, like chariots and horses in the sky, which "paw the light clouds and gallop on the storm."

Hoy-head, or the Keam of Hoy, being the most westerly hill and point of the island, and of great height, is also supposed, when viewed from the manse of Stromness, to present a profile likeness of one who may justly be distinguished as the living poet of *Scotland*,—Sir Walter Scott. I mention this as a proof of the extent to which his name and image have penetrated in the recesses of his native country, and of the impression which has been stamped by his genius on the minds of Scotsmen in every region and in every sphere. The mantle of Burns has descended on him. Like his more humble, but eminently illustrious precursor, he is deeply imbued with the "prophet's fire," which has illustrated the manners and character of his countrymen. His inspired hand has touched the rocks of our native land : a stream has gushed forth ; the heart of Scotland is gladdened and refreshed ; and all its highest, and deepest, and most patriotic sympathies, have been powerfully awakened by the magical powers of his imagination.

* Reference is here made to Mr Daniell's work.

I cannot omit recording an incident which occurred some years ago amidst the savage scenery of Hoy, and which bears the stamp of corresponding savagism in some of its inhabitants. The particulars are authentically, and even judicially established. In November 1815, a vessel, named the Albion of Blyth, was driven among the rocks at the Stower, betwixt Rackwick and the Old Man, a complete wreck. Only two of the crew were on board, all the rest having perished at sea. One of the survivors had fastened himself in the rigging, and the other was lying on his back upon the quarter-deck. The latter was alive, but speechless, when two fishermen from Rackwick, who had observed the wreck, descended through a cleft in the rock, and got on board. After plundering what they could conveniently carry from the wreck, they carried the speechless man from it, and laid him on a shelf of the cliff, where they left him, still in life, all night,—a night of November, when the earth was buried in deep snow, when an intense frost prevailed, and when a piercing sea-wind would have chilled to death, on the rocks of Hoy, the most vigorous human being, if exposed in a state of inaction to its power. The rocks above are some hundred feet of perpendicular height; but the natives ascend and descend surprisingly through some crevices and rents; and, after they left the dying man on the bare rock, they dragged up through the chasms an additional visitant, who had got drunk with

rum pilfered from the wreck. They also moved up pieces of timber; and there is little doubt, that, if the exhausted mariner had been removed when first discovered, and proper means been employed, his life might have been preserved. On returning next day, he was found dead, as was to be expected, and was covered with a turf on the spot where he had expired. It was only on this occasion that his fellow-sufferer was discovered in the shrouds, breathless, but the warmth of life still in his body. He, too, must have been alive the preceding day; and had not the love of plunder, and the desire to commit unwitnessed deeds, quenched every emotion of humanity, the lives of two human beings might, in all probability, have been saved. His corpse was consigned to the same sod with his ill-fated companion.

* “ If e’er a stranger wander o’er
This bleak and melancholy shore,
Amidst these fragments of the world,
On the deep ocean’s bosom hurl’d,
In nature’s wildest forms;
And, shuddering, view the gulph beneath,
And grasp the tempest-blasted heath;
Or, like yon solitary rock,
Erect his head to bide the shock
In this drear Land of Storms;

Oh! let him bend an eye below
Upon a scene of wrack and woe!

* I am indebted to some of my friends for several poetical pieces; and one of these, written by an Orkney gentleman, (whose name I have not permission to mention,) I shall insert in another part of this volume with pride and pleasure.

Aye—there, alas! the *strangers* came—
And hallow'd is the strangers' name
In peril's dark'ning hour :
Aye,—there they sought,—and sought in vain,
Some refuge from the yawning main ;
And through the foaming billows there,
They breath'd their last heart-bursting prayer
To Heaven's Eternal Power.

The wind raved fierce,—the night was dark,
When on those rocks was tossed the bark,
All shatter'd in the Atlantic blast ;
And, soaring on the faithful mast,
Aloft the sailor swung :
And Orkney's wintry thunder's roar
Rolled awfully along the shore,
And, dimly in the lightning's light,
Showed the dread cliffs, to mock the sight,
Which o'er them towering hung.

At length the sparkling star of day
Arose :—at length the morning ray
The horrors of the night dispelled ;
And Hope's last throbs were still unquelled
Amidst the billows foam :—

' Perhaps some manly heart and hand
' May guide our powerless feet to land ;
' Perhaps some kindly Christian here
' May comfort bring, and dry this tear,
' And bid us think of home.'

Ah, no! the heartless plunderers come,
And o'er the wretched remnants roam,
Spared by the tempest and the wave ;
And for their spoil even death they brave,
Untouched by misery's cry :
They bear the dying man away,
Unblushing, in the face of day ;
Nor try the struggling life to save,
But lead him, living, to his grave,
And leave him there to die.

See, stranger, at yon cliff-borne turf,
Above the murmuring torrent's surf,
The murdered strangers now repose;
Oh! think of their expiring woes,
Where now they lowly lie:
Perhaps while their last pulses flowed,
Their hearts with mild forgiveness glowed,
And their poor wedded bosoms bled,
And tender filial tears they shed
In life's last agony."

The only remaining objects to which the attention of a tourist is attracted or directed, in the natural circumstances of Walls and Hoy, are the Wart or Ward-hill of Hoy; the Dwarfie-stane, and the burn of Rackwick. The first of these is the highest hill in these islands; its summit being according to M'Kenzie 1200 feet, but by more recent observation about 1600 feet above the level of the sea. It is rounded, and rather uninteresting in its aspect, which is best seen from the main-land, and which is included in the view of Stromness. There is no vegetation near its top; but there is a very fine and constant spring of water almost at the very highest point. The view, however, is extensive and splendid. The whole cluster of the islands is spread out under the eye; and in a clear day the aspect of the landscape, so singular, and variegated, and vast, is rarely to be rivalled. It seems to be a fairy land, intersected with numberless rivers, and reflecting from its glassy lakes the clear sky above; while the hills of heath, relieved by the bright green and yellow spots of cultivation intermingled, afford a fine

contrast to the clear blue ocean around. Cape Wrath, Morven, and Benhope, with the swelling mountain scenery of Caithness and Sutherland, and the Stack and Skerry, a solitary conical rock at the distance of 60 miles, can all be clearly discerned with the naked eye, which, however strange it may seem, rests on this bare and open scene with a pleasure as exquisite perhaps as if it reposed on broad verdant lawns and clustering woodlands. The "Dwarfie-stane" is situated on the south-east side of the Ward-hill, 32 feet long, 17 broad, and its height seven and a half. This large stone has been excavated into several tiny apartments, but by whom, in what manner, or for what purposes, it is impossible to conjecture accurately, and there is no record. The "Burn of Rackwick," and some other ravines among the hills, have been described sometimes a little extravagantly with respect to shrubbery of natural growth. There are some very small birches and mountain-ash bushes, and dwarf willows, with creeping juniper; but they make a very sorry appearance to an eye accustomed with richer banks of brush-wood. The rocks are inhabited by numbers of eagles, and other birds of prey: Sea-fowls of all descriptions abound.

The island of Walls and Hoy is divided into two parishes. It forms part of the ancient Bishopric of Orkney, and a considerable revenue, in name of feu-duties, payable from all the lands held in feu, exclusive of a great part of the lands in South Walls, belongs to the Crown. The Ba-

rons of Exchequer in Scotland, who have the charge of all the King's properties of ancient church-lands, are understood to have some improvements in contemplation, by which the lands will be cultivated by the tenantry for their own benefit, and the fisheries will be encouraged in situations which are favourable for the purpose.

Manclett, a small farm belonging to the Crown, situated at the point where the harbour of Aithhope and Longhope are separated only by a narrow sea-beach, seems to be admirably adapted for a fishing village; and a comfortable inn at that spot, where the communication betwixt Caithness and Orkney is most frequent, would be a great convenience to travellers, and is much wanted.

CHAP II.

STROMNESS—STONES OF STENNESS—KIRKWALL.

FROM Walls and Hoy I proceeded in the ordinary way in a boat to *Stromness*, a small sea-port town and free burgh of barony, situated at the north-west corner of Pomona, or mainland of Orkney, in latitude $57^{\circ} 58'$ N. and in longitude $3^{\circ} 12'$ west of Greenwich. This place has risen, within the last century, from being a fishing hamlet, containing only a few scattered huts; and owes its increase to its admirable harbour and convenient position, by which it is rendered a place of safe resort in those stormy seas to vessels of all nations trading in the north of Europe and with America. Its harbour indeed is the great attraction. It is a fine natural basin, extending from south to north about one mile, and probably one-fourth of a mile wide; the soundings being from one to four fathoms.* It is sheltered from the Atlantic on the west by a high ridge of moorish ground, the southern extremity of which forms the north side of Hoy sound; and its mouth is protected partly by the green island of Græmsay, which lies mid-way in the sound, and partly by a *ness* or point of land which stretches out from

* *Vide* M'Kenzie's Charts.

the westward, and covers its entrance from the force of tide and tempest in Hoy sound. On the east side it is defended by two small islands or holms, which extend along the back of it; and even beyond these, in a sort of outer harbour or road-stead, there is excellent and extensive anchorage for shipping. It is no uncommon thing, in the spring months, to see in these harbours 50 large vessels on their way to the whale fishery at Davis' Straits and Greenland, exclusively of other casual visits,—so that property worth half a million at least is frequently afloat in the harbours of Stromness. It is a gallant sight to see these fine fleets heaving anchor and setting sail with a fair wind, amidst jolly shouts of hope and enterprise, passing swiftly along in succession under the frowning cliffs of Hoy-head, and in a little while disappearing on the verge of the broad horizon amidst the white curls of the ocean.

The increase of Stromness in size and population has been very rapid, considering its remote situation and the peculiarity of its circumstances. Within the last twenty years its population has been nearly doubled, being at present nearly 2000; and many substantial, but few comfortable houses, have been built in it within the same period. Its connection with and dependence on the harbour is very evident. The houses, in a straggling irregular form, have generally been built as near the sea as possible, the ends often within flood-mark, and protected by bulwarks, quays, and jetties, which every individual has built as

suited his own convenience and taste. This range of clustered buildings extends along the side of the harbour, and is connected together by a narrow lane, never exceeding 12 feet in width, and sometimes so narrow as four or five. It runs in a ziz-zag direction,—is ill paved with flag-stones of unequal sizes, and is usually very filthy. The buildings are confined within a very narrow space, skirting the shore, by a large tract of common, which bounds it on the west and north sides. This common extends to about 5000 or 6000 acres, all lying waste except a few irregular patches which have been cultivated by the natives; and this large space of ground, much of it capable of improvement, is used in common, and subjected to a ruinous system of paring the vegetable soil for a miserable sort of fuel. It belongs to the Crown as part of the ancient bishopric, and ought undoubtedly to be opened up to the improvements which are beginning to creep into Orkney. An application to this effect has lately been made by the magistrates of the place to the Barons of Exchequer; and it is to be hoped that a measure of such obvious utility will be speedily pursued.

It will surprise many persons to be told, that the town and parish of Stromness, containing a population of about 3000 souls, has public worship in the established church only once in the fortnight, the clergyman being obliged to officiate in another parish, Sandwick, every alternate Sunday, at the distance of seven miles, where there is a population of nearly 1000 persons.

The town of Stromness and the parish of Sandwick, are also destitute of parochial schools. To comment on facts so discreditable to the district in which they present themselves to view, is altogether unnecessary—but the facts ought to be stated in a manner the most public and uncere-
monious.*

It is not a part of the plan of this narrative to enter into very minute statements with regard to the progress and condition of every small town visited in the course of the voyage; but there is a peculiarity in the history of this little place which may be noted. By the ancient laws of Scotland, the royal burghs were vested with a sort of monopoly of trade; and the incorporations of every petty village which had the designation of a burgh, were armed with very arbitrary powers, to prevent competition by the inhabitants of other non-privileged places. These powers were about the years 1742, 1756, and intervening years, exercised towards the inhabitants of Stromness by the burgh of Kirkwall, with a most vexatious, unrelenting, and illegal severity. This led to a very complicated and tedious litigation in the Scotch Courts and in the House of Lords, upon technical points in the law of Scotland; but the struggles of the poor traders of Stromness were at length crowned with success,

* Some public spirited individuals have lately instituted the necessary proceedings in the Teind-Court, under the sanction of the General Assembly, for getting these important wants supplied.—*March 1822.*

and they were freed by a decision of the Supreme Court from the thralldom of an illiberal and jealous supremacy in the magistrates of their neighbouring burgh. In 1817, they obtained a royal charter, erecting Stromness into a free and independent burgh of barony, with magistrates, privilege of trade, and jurisdictions peculiar to such institutions. Since that time, the herring-fishery has been introduced into Orkney upon an extended scale, and the people of Stromness are among the most spirited adventurers. The only sort of public building which this place affords is an unfinished church, which is very free of all ornament. The view taken of this place is from the road towards Kirkwall on the north east, and shews the port, with the hills of Hoy and Graem-say in the back-ground.*

From Stromness I went to the Stones of Stennis, or Stenhouse, about four or five miles on the road to Kirkwall. These are very singular and interesting monuments of antiquity. They cannot, however, be compared to Stonehenge; and, whether they be Druidical or Scandinavian, it is impossible to survey these relics of ancient devotion or superstition, in their present state of neglect, without regret. They consist of two clusters. One of these is a complete circle, 60 fathoms in diameter, including the wide ditch which surrounds the circle of stones, many of which are now thrown down. This circle stands conspicuously on a peninsula, gently elevated on the north

* A library has recently been established by subscription among the inhabitants.—*March 1822.*

side of the Loch of Stennis, and dividing that sheet of water nearly into two equal parts, of five or six miles in extent each. On the southern side of the lake, (which is connected with the opposite promontory by a low mound of stones, having openings for the tide to pass,) there are now only three pillars remaining of what seems to have been another circle, or part of a circle of larger dimensions, and one detached stone at the south end of the bridge of Broigar. Each of the remaining pillars is about 18 feet above ground: one was lately thrown down, but has not been broken; three were, in the month of December 1814, torn from the spot on which they had stood for ages, and were shivered to pieces. A similar detached pillar, with a hole cut through it, was likewise destroyed at the same time: it stood on the east side of the larger stones, and seems to have been the rude altar to which the victims for sacrifice were bound. In later times it was a consecrated spot for the meeting of lovers; and when they joined hands through the stone, the pledge of love and troth thus given was held as sacred as the solemn vow of marriage, and rarely indeed, if ever, was it violated by the romantic visionaries who resorted to this shrine. This unfortunate act of destruction was thoughtlessly perpetrated by the tenant of the adjacent farm, (whose name it is not necessary to mention) for the purpose of building byres—cow-houses. The whole would have shared the same fate; but the late Mr Malcolm Laing, whose history of Scotland will be a lasting monument of his re-

search and accuracy, was roused by the prospect, and, in conjunction with two other gentlemen then resident in Orkney, made application to the Sheriff Court of the county to stay the work of destruction. This was accordingly done, until the proprietor of the lands on which the stones are situated interposed to prevent farther injury. I do not intend to reprobate the error which was thus committed by the farmer, or to declaim against the want of taste which it evinced, because want of taste is not a crime, and the individual alluded to, a very worthy and respectable person, had no intention whatever to do mischief or to offend. He has indeed suffered a sort of mean persecution ever since. The peasantry, who were removed by his landlord when he entered to his farm, availing themselves of the prejudice which had arisen against him, partly at least as a *Ferry Louper*, (the name by which all persons not natives of Orkney are designated by the vulgar,) were loud in their complaints against him. Various conspiracies were basely formed to injure him, and two different attempts made to set fire to his dwellings and his property, happily with little effect. But, however much such a spirit is to be reprobated, the destruction even of a few rude stones is in certain cases a subject of regret. There are some people who deride the idea of lamenting over the destruction of even the most magnificent remains of antiquity; and certainly, when contrasted with the more precious relics of intellectual power in other times, their loss is not to be so deeply deplored. But

he who destroys or defaces a monument of ancient times, whether it be a Scandinavian circle or a cloistered abbey,—a Grecian temple or a Christian church,—the hall of a feudal baron, or any other among the gifts of genius and science, in regions and in ages which are gone by, and were adorned by such productions,—does a positive injury to society. A link in the chain of our associations is broken: The land-marks between different generations of men are thrown down: Some of the materials, however slight, out of which the knowledge of mankind is formed and their feelings moulded, are taken away: Facts for the illustration of history, of manners, and of religion, are lost; and we are bereaved of the possible advantages which might perhaps have resulted from the future contemplation of such objects by the poet, the moralist, and the patriot. Something should therefore be done for preserving these stones for the future. Such of them as have fallen down should be replaced, and the ground on which they stand, if suitably inclosed and planted, might, at very little cost, be kept from the sacrilege of the plough and the spade, and the devastations of hogs and men.

It is not my purpose to engage in a controversy whether these stones at Stennis be Druidical or Scandinavian. But it is quite obvious that some of the arguments which have been employed to shew that they could not be Druidical, are quite inconclusive; and, on the other hand, it is not improbable that they were used as places of assemblage for administering the rude laws and

still ruder religious orgies of the Scandinavians. In either case, their perfect preservation was desirable, as the resemblance they bear to other antiquities of a kindred character might have tended to elucidate some matters not, perhaps, unworthy of solution. Their antiquity, however, is undoubted, reaching beyond the limit of all written record; and that mind must indeed be vulgar which can find no gratification in viewing, amidst the solitude of an Orkney scene, those simple records of humanity in its earliest movements,—or which cannot glean from under the moss of ages that clothes these memorials of their fathers, some tokens of the impulses by which the human heart, even “in days of darkness,” aspires to immortality.

From Stennis I continued my walk to Kirkwall, through roads, or rather tracks, partly formed by the hand of man, but chiefly by the resort of cattle and passengers to and fro. Some efforts seem, however, to be now making to form a road in this direction; but there is still much to do. The aspect of the country through which I passed is bleak. On the right hand a range of hills extends from the vicinity of the bridge of Waith, at the estuary of the loch of Stennis, eastward to Kirkwall, and at Firth another range to the left extends northward through the parishes of Firth, Harra, Birsay, and Rendal, and terminates at Costa-head in Evie parish. At the distance of about eight miles from Stennis, I reached Kirkwall, which is the chief town in the Orkney Islands.

CHAP. III.

KIRKWALL—CATHEDRAL.

KIRKWALL is situated in the latitude of $58^{\circ} 59' 31''$ N. and in longitude $3^{\circ} 23' 6''$ W. of Greenwich. It is a very ancient place, is in the very centre of the province, and stands at the north side of a narrow isthmus, which connects the broad and straggling extremities of Mainland, or Pomona, the largest island of the cluster. This isthmus is little more than a mile in width, between the bay of Scapa on the south and that of Kirkwall on the north; and this circumstance naturally pointed it out as the most convenient site for the place of general resort among the islanders. A canal across this narrow neck of land has been spoken of as a project which would be beneficial to the country; but although its utility is obvious, and its practicability at a very moderate expense very manifest, it is extremely doubtful if such a spirit of union and enterprize shall ever arise among the gentlemen of the district as to carry it into effect.

This town extends from north to south in a sweeping direction along the skirts of a small *oyse* or inlet of the sea from the bay; and it consists of only one street about a mile in length,

exceedingly narrow, ill paved, and dirty. About the middle of the town, indeed, there is an irregular sort of oblong, which is considerably wider than the lanes towards either end.* The houses are huddled together very inelegantly, and, it should seem, very uncomfortably for the inhabitants; but the varieties of light and shade produced by the scattered and irregular groups of buildings, aided by the majestic pile of its cathedral and some ruins in the vicinity, render it no contemptible subject for the artist's pencil. Its appearance, on the approach by the Stromness road, is rather *surprising* to the stranger; and when the setting sun, as I saw it, threw its falling beams on the landscape, and gradually left it in the long summer "gloamin" of Orkney, it had a character of softness and grandeur for which I was not quite prepared. The views of this place will convey a pretty distinct idea of its appearance in different aspects. The venerable cathedral is the most prominent object from every quarter. A few notes of its history, therefore, shall here be given. The singularity of its situation, the very existence of this stately fabric, and its claims to public attention, are very little known even in the adjacent counties of Scotland.

When a stranger visits and traverses the Orkney Islands, he is struck with the contrast which they present to the more cultivated districts in

* A great improvement on this street was effected in summer 1821.

the southern parts of Britain. The islands are in general flat and partially cultivated ; and a dark brown hue over the whole surface, without a tree, or green hedge-row, or a smiling cottage, with its garden shrubs, to enliven the aspect,—indicate the sovereign predominance of bogs, of heath, and of rocks which have been robbed of soil and verdure.* On a closer approach and more minute inspection, the rude and antique huts, overgrown with turf or foxglove,—the corn patch of crooked and unequal ridges, intermixed with stripes of fine sward,—the huge and imperfect sod fence of immeasurable length, which separates the *hill* or common from the town lands,—the strange usages and implements of rural life,—the primeval aspect and costume of the peasantry, (which are worthy of a touch from Wilkie or Allan,)—the summer-stillness of nature, and the seeming drowsiness of every animated being that is visible, impress on the imagination of a visitor all the ideas he may have formed of remote times, and of mankind in the first stages of civilization. They produce, in fact, a sort of chilling consciousness of being in the midst of dreariness and desolation. In the bosom of all this apparent barbarism, however, the stately pile of St Magnus' cathedral is to be found,—a Christian temple which has stood dur-

* In an old parochial report of Hoy and Walls, the description of their appearance, which is extremely graphical and concise, may be applied generally to Orkney: "Mosse and mount and wilderness, quhairin ar divers great wateris." 1627.

ing nearly the half of the Christian era. Its character is that of simplicity and grandeur united,—qualities so intimately blended that it is difficult, perhaps, to find the latter in its highest state if not accompanied with the former. Its dimensions and peculiarities are as follows :

The whole length of the cathedral from east to west is 226 feet, its breadth 56. The arms of the cross or transept are each 28 feet beyond the side walls, and 28 feet in breadth. From the floor to the ridge of the roof the height is 71 feet, and to the summit of the spire on the central tower about 135 or 140. The roof is finely arched, and the aisles behind the columns by which it is supported are closed above by a series of groined arches. The tower in the middle of the cross is supported on four massy Gothic columns 24 feet in circumference, and from these four handsome pointed arches rise to uphold the tower. In the quire, or east end, there are two strong piers or pillars, and two Gothic columns on each side for supporting the arches, walls, and roof; and the west end and vestibule are supported by twenty columns, (ten on each side) 18 feet in height and 15 in circumference, all encrusted with the green and sombre moss of antiquity. The architecture is not pure and unmixed, a circumstance easily accounted for by the fact that it was built at three different periods, and some parts of it in times not very remarkable for the correctness of Scottish taste in architecture. It is built chiefly of red freestone, in-

termixed sometimes regularly, about the west end in particular, with white. The east window is reckoned handsome: It is provincially called a *rose* window, being a Gothic form of four pointed arches separated by three shafts; and a wheel or circle is added above of 12 compartments, the height of the whole being 36 feet and the width 12. On the south wing of the cross there is another circular window; and in the nave, three doors and a fine Gothic pointed window, and two side doors, forming with the others a porch. The total number of pillars is 32, and of windows 100, of which number only 28 were open and glazed in the year 1770, since which time they have all been opened and glazed. The views, however, will give a better idea of the fabric than any description. A good many of the pinnacles on the angles have fallen down,* and the accumulation of earth upon the south side, occasioned by the very improper practice of burying the dead close to the wall, has raised a mound upon the side of it to the height of 15 or 20 feet, which conceals a great part of it. A paltry roof, too, on the middle tower, disfigures it extremely, and injures the general effect; and the white wash which has been put upon the whole inside of the quire (with the best intentions and for supposed purposes of utility, no doubt,) is a blemish of very modern date, on which I forbear to animadvert. Time will wear it off;

* These have all been replaced.—1822.

and it were to be wished that the seating and interior accommodation were less incongruous,—that the good citizens of Kirkwall would spare their garish colours, red, blue, and yellow, for carts and ploughs, and not bedaub with these a set of boards which are fastened up to hide the chaste ornaments of Gothic columns in an antique cathedral. The modern inner window which separates the quire from the transept, and which shews the whole length of the interior upon entering the west door, ought certainly, instead of being painted white, to correspond, on the outside at least, with the tone of colouring which surrounds it.* But to proceed with its history :

Magnus, Earl of Orkney, was assassinated in the island of Eaglesay about the year 1115, by Hacon, a rival in power. Dr Barry, who writes a history of Orkney, (without referring to any authority,) states the time of Magnus' death to have been 1110. The murdered earl, from his sanctity, was canonized, and his body deposited in Christ Church at Birza, at the north-west corner of the Mainland. Ronald, a nephew of St Magnus, who, in those half-religious, half-savage times of chivalry, had visited Palestine as a cru-

* I am happy to be able to mention, that Mr Gillespie, architect, has most handsomely offered to furnish gratuitously a design for a new spire to the tower of the Cathedral. Those who have seen the Roman Catholic chapel of Glasgow, and other specimens of his professional taste, will not doubt that the plan which he has promised will be worthy of the Cathedral, and in harmony with the character of the whole of that fabric.

sader, having been discomfited in an attempt to gain possession of the earldom of Orkney, found it expedient to stir up his followers by the influence of superstition. Before setting sail from Zetland on his voyage to Orkney, he vowed that, if successful in his second attempt, he would erect a splendid church and dedicate it to his uncle's memory. He was successful, and performed his vow by founding and building the central cross and tower of the cathedral. This must have been done betwixt the years 1130 and 1159, the period during which Ronald lived and was earl of Orkney. The work was not accomplished, however, without difficulty; and it is said that, in order to induce his followers and subjects to co-operate with him, and to finish the undertaking after it was begun, the islands were parcelled out in lots among the people, and rights of property created peculiar to the Scandinavian nations, the vestiges of which still remain in the udal land-rights of the proprietors. Thirty-four years after the murder of St Magnus, his bones were transferred from Birza to the new cathedral, and Count Ronald was declared a saint by the Pope, on account of his pious work. It is not a great many years, it is said, since, on removing some stones in the side of one of the large pillars of the quire, bones were found within it; and some persons have conjectured that these were the remains of the tutelary saint of the place. The character of the original fabric is similar, perhaps coeval, or borrowed from some specimens of Gothic architecture (noticed by

Dr Clarke) in the eastern regions, which Ronald had visited.*

At the time this church was built, Orkney was subject to the crown of Norway. That there was then, or soon after, a bishop in the country is probable, if not certain; at least, in the year 1312, a “memorandum” of agreement, “*compositia super transgressionibus*,” was formed at Inverness betwixt, Robert King of Scotland, personally, and Haco, king of Norway, by certain commissioners, one of whom was “*Ecclesiarum Bergensis et Orcadensis Canonicum*.” The deed appears to have passed under the seal, among others, “*venerabilis Patris Domini Wilhelmi, Dei gracia, Episcopi Orcadensis*.” And on the 29th of October, the same year, there is a treaty betwixt the kings of Norway and Scotland, which includes a *prior* treaty made in the year 1266, in which the cathedral of St Magnus, the bishop of Orkney, the bailie, and the canons of that church, are all specifically mentioned. This earliest treaty arose out of the celebrated battle of Largs, in which the Norwegians were defeated by the Scots. Haco, the luckless warrior on that occasion, retired to Orkney, and soon after died in the bishop’s palace at Kirkwall. His son, Magnus IV. some years afterwards, entered

* Those who are anxious to be more particularly acquainted with the fabulous or early history of Orkney and Zetland, may consult Dr Barry and Dr Edmonstone’s works, or Torfæus and the Orkney Inga Saga, from whence they borrow.

into the treaty referred to with Alexander III. of Scotland. By it the tribute called the "annual of Norway" was stipulated to be paid from Scotland. Alexander received Man and the other western islands, freed from the claims of Norway; and from the subjects ceded there is the following exception: "Et exceptis insulis Orchadie et Zhetlandie, quas idem rex Norvagiæ, cum dominiis, homagiis, et redditibus, servitiis, *et omnibus juribus et pertinentiis suis*, infra easdem contiguas, domino suo specialiter reservavit. Itaque Alexander, rex Scotiæ, &c. et heredes sui, in perpetuum pro istis concessione et resignatione, ac quieta clamatione, et precipue pro bono pacis, &c. dabunt et reddent in perpetuum sepedicto regi Norvagiæ et heredibus suis et eorum assignatis in perpetuum, infra octavos nativitatis Sancti Joannis Baptisti, *in Orcadia terra, scilicet, Domini regis Norvagiæ* IN ECCLESIA SANCTI MAGNI, *in Manu Episcopi Orcadensis, seu balivi ipsius, domini regis Norvagiæ, &c. vel in eadem ecclesia deponetur ad opus ipsius domini regis Norvagiæ, sub custodia canonorum ejusdem ecclesiæ, si Episcopus vel ballivus non inveniantur,*" &c. "*centum marcas,*" &c.*

There is thus, in the public records of Scotland, satisfactory evidence that, in the year 1266, the cathedral of St Magnus was in existence, and canonically occupied according to the fashion of the age; and the date assigned as that of its

* Vide Rentals, App. No. I. p. 3.

erection seems not to be questionable upon very good grounds. A *diploma*, or *deduction* of the lineage of St Clair, of a subsequent date, was conducted in the cathedral, and under the auspices of Thomas “Episcopus Orchadiæ et Zetlandiæ, canonici ecclesiæ cathedralis Sancti Magni martyris gloriosissimi, legifer, cæterique proceres, nobiles, populas ac communitas ejusdem.”* The family of St Clair continued to possess Orkney as lords of the country till 11th May 1471; but, previously to that time, the *sovereignty* of the islands was impignorated to the king of Scotland (James III.) in security of the dowry of the princess of Denmark, who became queen of Scotland. The treaty by which this was effected is dated 8th September 1468. The arrears of the annual tribute were discharged, and all the rights of the crown of Norway were pledged to the Scottish king, and ere long absolutely transferred.† In 1471, the castle of Ravenscraig, and certain lands in Fife, were given by the king to St Clair “pro jure suo comitat. Orchadie.” The transaction was ratified by Parliament; and on the 20th of May the same year, the earldom of Orkney and lordship of Zetland were annexed to the crown, not to be given away in time coming to

* See the Document in Wallace’s Account of Orkney, Edit. 1700.—P.

† “Omnes et singulas terras nostras insulam Orcadensium, cum omnibus et singulis juribus, servitiis, ac justis suis pertinentiis nobis, *regali jure*, et predecessoribus nostris Norvagiæ, regibus spectantibus, seu quovismodo spectare volentibus.”

“ na persoune nor persouns, except only till ane ye kings sonis of lachfull bed.” In a Parliament holden at Edinburgh (May 9,) 1485, among the public acts there was an order to the Scottish ambassador at the Court of Rome to obtain a Popish confirmation of these transactions;* and all the sanctions by which the transfer to Scotland could be strengthened were resorted to. The cathedral was thus vested, along with the other rights of sovereignty, in the king of Scotland,—subject only to the laws of the land, by which it was consecrated to the service of religion, under the Episcopal form of church government. There were three bishops in succession after the annexation to Scotland, before Andrew was appointed in 1478.

Soon after this annexation of Orkney to Scotland, King James III. seems to have been induced to grant a charter to the inhabitants of Kirkwall, (31st March 1486,) erecting the village into a royal burgh and city, with extensive jurisdictions, and property, and privileges. The chief object of the grant seems to have been to insure the preservation of the cathedral, by committing the charge of it, with funds for upholding it, to some local authority; at least, this has evidently been the pretext under which it was sought; and, accordingly, the cathedral church, with all the lands and rights belonging to it, were conferred on the incorporation of Kirkwall, with power to let or sell the lands, “ to be always em-

* Vide Acts of Scottish Parliament, Vol. II. p. 101, &c.

ployed and bestowed upon repairing and upholding of the said kirk called St Magnus' Kirk." This charter seems to have been altogether a surreptitious and illegitimate production, as it included the whole ecclesiastical revenues of the bishopric, with the existence of which it was clearly incompatible ; and so plainly was this the case, that there is not the slightest vestige of evidence in existence to shew either that infestment passed on it, or that the incorporation ever possessed themselves of the church and its property, or took any care whatever of the building. It has been said (but I have not seen the authority for the statement,) that the whole lands in Orkney paid teinds or tithes to the archbishop of Drontheim, and afterwards to the archbishop of St Andrews. And, possibly, during the short time that the latter enjoyed the tithes of the benefice, if ever it did so, some emoluments of the see were drawn by the burgh of Kirkwall. But if this was ever the case, they did not long possess either the cathedral or the funds belonging to it, which were speedily restored to the church. The supposition, indeed, is not credible, as Andrew was bishop at the time they got this abortive charter, and would never have consented to part with consecrated emoluments to such civic interlopers on the rights of the church.

During the Norwegian possession of Orkney, there were no written land-rights in the province. The sole title was possession on the udal or allodial tenure, as it exists to this day in Norway and

in Orkney; and the titles to the property of the bishopric, whether in lands or teinds, was therefore consuetudinary, like the property of every landholder in the district. In little more, however, than four years after the charter to the town of Kirkwall was granted, the bishop of Orkney found it requisite or expedient to protect his benefice according to the law of Scotland against the pretensions of his neighbours; for, on 10th October 1490, he got a royal charter erecting the whole bishopric into a regality in favour of “Andream Modernum Episcopum et pretatum dictæ ecclesiæ cathedralis Orcadiæ.”* This charter, which declared many rights and privileges enjoyed by succeeding prelates, was confirmed by another on 20th January 1501;† and an extract of this deed, along with the original, which it confirms, is extant among the bishopric writings at Edinburgh. To Andrew succeeded Edward Stewart, who lengthened the quire of the cathedral at the east, by adding the three arches which rest on the Gothic columns already mentioned, and by introducing the *rose* window at the altar. Edward was followed by a Thomas bishop of Orkney, who established an endowment for the support of the choristers to the cathedral,—an establishment long ago swallowed up by the subsequent changes in politics and church government; and, in 1525, Robert

* Vide Rentals, App. No III. p. 14.

† Ibid. App. No IV. p. 16.

Maxwell became bishop of Orkney. He fitted up the cathedral with stalls in the quire, and furnished the tower with a set of finely toned bells, which are still rung every day in a particular chime.

In 1540, Robert Reid was appointed to the see, —a prelate of a munificent and patriotic spirit. Although it may be truly said he was the founder of the University of Edinburgh, and projected a college in Orkney,* it is foreign to my purpose to notice the various instances on record of his generous patronage of learning. It is sufficient to connect his exertions with this cathedral, which he enlarged very considerably at the west end by lengthening the body of the fabric. This addition (which, in the arched roof, has never been quite finished,) has perhaps overdone the thing, and put the church a little out of proportion; in other respects, it seems to have been curiously decorated by various and mixed specimens of architecture. On the 28th of October 1544, Bishop Reid, by a new erection, remodelled the ecclesiastical foundation of his cathedral; and the deed, which is still extant, was signed by him and the other members of the chapter “*apud ecclesiam nostram cathedralem.*”† It was confirmed by a bull of Cardinal Beaton soon after, (30th June 1545;) and Wallace, in his account of Orkney, says it was also ratified

* Vide M'Crie's Life of Melville.—M'Kenzie's Lives.

† Rentals, App. No. V. p. 18.

by Queen Mary ; but this latter document I have not seen, although the former is extant and entire.* This new erection embraced a number of arrangements for the splendid celebration of Catholic worship ; but the bishop's course of power and usefulness was suddenly closed by his death at Dieppe in France, whither he had gone as one of the Scots commissioners who attended Queen Mary on her marriage with the Dauphin. He was the last Roman Catholic prelate in Orkney who lived and died in that faith ; and, as far as his character can be discovered from his deeds and from history, he would have done honour to any church, and any age or country. With Reid's life the embellishment, or even the completion of the cathedral, seems to have terminated ; for the reformation was then making rapid progress, and its genius was unfriendly in Scotland to every thing like pomp or magnificence in the offices of religion. This building was, however, spared from injury.

Adam Bothwell, whose temporising character makes a figure in the history of those times, was appointed to the bishopric in 1562,—two years after the nominal abolition of Popery ; but, although a man of talent, he was more busied in intriguing with and truckling to the powers which prevailed, than in discharging honestly any of his Episcopal or clerical functions. Sometimes a bishop and sometimes a presbyter, and

* Rentals, App. No. VI. p. 25.

generally sinking both characters in those of a civil judge and courtly politician, he contrived to enjoy an equivalent for the fruits of his benefice, by farming it out to Lord Robert Stewart, abbot of Holyroodhouse, the queen's natural brother, who had various leases and grants from the crown of the earldom of Orkney, and who, with some interruptions, enjoyed as a tenant the bishopric along with the earldom for a good many years.* It does not appear that this reformed bishop or Lord Robert troubled themselves or the men of Orkney with much religion in any form; but there is evidence that the Stuarts, while they held the patronages in Orkney, and possessed the bishopric, in the first period of presbytery, maintained the cathedral, the nominal bishop keeping the quire in repair as a place of worship.† It may be proper to state, before I go farther, that during the episcopate of Reid, while he was employed in enlarging and adorning the cathedral, the burgh of Kirkwall somehow got a confirmation of their old charter from King James V. (dated 8th February 1536,) in which a great many fabulous virtues are ascribed to them, and, amongst others, their merits in repairing, mending, &c. the cathedral, which, together with the church lands, is of new given to them. This nugatory document, manufactured by the agents of the corporation as a matter of course, and passed

* Bishop Bothwell exchanged the possession of his see for that of the abbacy of Holyroodhouse.

† Vide Petition to Parliament in the Acts, chap. I. p.

without the notice or knowledge of those interested, seems to have been of no more use than the former; for the bishop and earls still kept possession of the cathedral and all its appendages and emoluments.

Lord Robert Stewart, and his son Patrick, earl of Orkney, who succeeded him, seem to have inherited some portion of their father's princely taste for fine buildings. The former, in addition to his ancient castle of Kirkwall, built a palace at Birza, and the latter reared the castle of Scalloway in Zetland. Not satisfied even with all these, he erected, about the year 1600, a palace of considerable extent near the south side of St Magnus' church, and in the immediate vicinity of the bishop's house. The ruins of all these remain in a state of preservation sufficient to shew that they must have been reared with great care and expense; and their very existence renders it probable that the Stewarts, earls of Orkney, who possessed and exercised great power, would prevent any injury from being done to the ancient cathedral during the time they bore sway in the islands. The remoteness of the situation, too, from the convulsions which broke out at Perth, and ended in the demolition of many religious houses, serves to explain the circumstance of its preservation. In later times even, the distance and insulated situation of an Orkneyman protect him from all sudden sympathies with popular feelings elsewhere; and when the voice of war or revolu-

tion is heard by him, the hour of enthusiasm has passed away, and the emotions excited are faint and feeble:

“ ere it reaches him,
Rumour, so loud when new, has died away
Into a whisper, on the memory borne
Of casual traveller: As on the deep,
Far from the sight of land, when all around
Is waveless calm, the sudden tremulous swell
That gently heaves the ship, tells, as it rolls,
Of earthquakes dread, and cities overthrown.”*

Every body is well acquainted with the fatuous zeal of King James VI. of Scotland to restore Episcopacy in that country, in opposition to all the principles and prejudices of the nation. He at length accomplished his purpose; and, among the pliant clergy of the Presbyterian church who formed the newly created hierarchy, James Law was converted by a bishopric. So early as 13th February 1605, the king granted a renunciation of the revenues of the see, while these were yet in the enjoyment of Earl Patrick, who still continued to possess the bishopric, under a contract with Law, the new bishop.

* Graham's Sabbath.

CHAP IV.

BISHOP'S PALACE—EARL'S PALACE—CASTLE OF
KIRKWALL—PATRICK EARL OF ORKNEY—MAR-
QUIS OF MONTROSE—CATHEDRAL.

BEFORE proceeding farther with this slight historical sketch of the transactions connected with the subjects which enter into the more picturesque views of Kirkwall, it is proper to mention the different *buildings* near the cathedral, which form part of the group. Of these *the Bishop's Palace* is the most ancient. The date of its erection is not known; but it is now nearly all dilapidated except a round tower which was built at the north end of it by Bishop Reid, who also made a considerable addition to the church. The view given of the tower shews a small freestone statue of the prelate, which has been permitted to stand, little injured by the barbarians who have pulled down and stolen the materials of other parts of the bishop's house, now in a state of entire decay, its interior being occupied partly with a cow-house and dunghill. All that remains of the "Palace of the Yards," (as this building has long been styled,) in which Haco of Norway dwelt and died, is thus occupied. On

the east side of the round tower stood two others, one large and very ancient donjon, the other smaller and circular. The last remnant of these was some years ago torn down to build a house for the store-keeper to the king's tenant in the bishopric.

A little to the eastward from the bishop's, stand all that remains of the Palace of the Earls of Orkney. After the Reformation, Lord Robert Stewart and his son, Earl Patrick, obtained grants and leases of the earldom and bishopric of Orkney, which were, in fact, consolidated and confounded into one tyrannical lordship along with Zetland. Bothwell, however, being created Duke of Orkney by Queen Mary, there is the strongest reason, from many circumstances, to conclude, that Noltland Castle, a noble but unfinished tower of strength in Westray, (one of the North Isles,) was erected with great rapidity, as a secure and convenient retreat in this "Dukery," and was abandoned suddenly before its completion, on the fall and flight of that minion. Lord Robert, who had been outed from Orkney to make way for his sister's lover, resumed possession after Bothwell's exile; and, finally, his son Patrick, besides the earldom, obtained a charter of the bishopric from the crown in 1600, he and his successors, earls of Orkney, being therein, among other offices, appointed "*custodes, gardianos, et constabularios castri de Zairdis.*" On acquiring this grant, Earl Patrick immediately began to build what is now distin-

guished as THE EARL'S PALACE, which, with the old bishop's towers and house, formed a complete square of buildings, extending from east to west about 240 feet, and from north to south above 200, with an open area or *close* in the middle. The earls of Orkney, Robert and Patrick Stewart, inherited from their progenitor, James V. a taste for magnificence and profusion; and, like the Scottish barons of their age, they were characterised by pride, ferocity, and the exercise of power, independent alike of the monarch and the law. They exercised an ill-regulated authority over the Orkney and Zetland islands, and their houses of strength were spread through their lordship in commanding positions. From early times, the castle of Kirkwall (built by Henry St Clair, the first earl of that name in the 14th century,) was the central fort of the earls. The massy reliques which still continue on the north-west side of the cathedral, degraded as they now are,—the site of some mean hovels, having shambles, pig-sties, and cow-houses in their bosom,—bespeak the workmanship of the olden time. It was to this castle that Bothwell fled for refuge after the parade on Carberry hill. But Balfour, the governor of it, whom his mistress had appointed to that situation, refused to admit him into it, having too much caution to succour and shelter a falling man. The town of Kirkwall and other parts of Orkney were, in revenge or from necessity, subjected to the first acts of Bothwell's piracy and plunder. In addition to the castle of Kirkwall,

Lord Robert, as already noticed, built the spacious palace at Birza, in the west Mainland, which is fast falling to decay. Scalloway castle in Zetland, and the Earl's Palace, or "Newark in the Yards," at Kirkwall, with a place of strength in Walls, formed altogether, along with the others, a princely establishment of houses for a Scottish baron, even with royal blood in his veins, during the rude times of Queen Mary and James VI. They are monuments of the taste and the tyranny of their founders: They naturally combine, as the vestiges of oppression, with the perishing records of the district, and with the traditions of the peasants in Orkney and Zetland, who have long enjoyed the liberty to pull down what their fathers were compelled to rear. As the tale of Earl Patrick's fall may be interesting to some, it shall be here given shortly. It affords a picture of the era in which he was sacrificed.

The restoration of bishops, and the appointment of James Law to the see of Orkney in 1605, abridged the power and property of the earl. His extravagance surpassed his alleged extortions; and becoming involved in debts and wants, he scrupled at no means, sufficiently common on every feudal estate throughout Scotland at the time, to supply his demands and gratify his love of power. The bishop's interests and his jarred. They both dissembled at first, but the bishop over-reached him. They entered into a contract, by which the bishop agreed to leave the lands and revenues of the see during his life

with the earl, upon condition of getting an annuity and “The Newark in the Yards” as a palace.* This agreement, however, did not long subsist. Law cherished the clamours of oppression against the earl. He collected the grounds of complaint,—digested and procured accusations for the Privy Council and other corrupt courts of law in Scotland,—he plied the cupidity of James by the prospect of a forfeiture of the earldom to the crown, and fed his insatiable vanity by the most abject and ludicrous flattery.† The removal of the earl would, at all events, free the see from his grants of it,—and promotion to the archbishopric of Glasgow was, in fact, the reward of the bishop’s services. The earl was consigned to the loving kindness of a Scotch Privy Council. He was imprisoned alternately in the castles of Edinburgh and Dunbarton for several years, prosecuted in the most oppressive manner, and, so far as can be discovered, was not divested of his estates and honours by any legal process or decree. It has been said, indeed, that the king, apprehending a landing of Spanish troops in some of the harbours of Orkney, in aid of the Popish faction, who were very active at that time, bought up some debts upon the earl’s estate, and, under this subterfuge, took possession of his castles and property. That he did buy up Sir John Arnot’s mortgages on the earl’s estate, and take possession of the earldom, is indeed

* Rentals, App. No. XI.† *Vide Letters.*

certain. While in prison, the earl of Orkney, indignant at these lawless proceedings, authorised his natural son to levy his rents and exercise the jurisdictions and powers conferred on him by legal grants; and that young man and his adherents in Orkney superseded the persons who had been arbitrarily appointed by the Privy Council to levy the earl's rents for the crown. The earl's son and friends drove out those intruders, surprised and took possession of the palace of Birsa, the castle of Kirkwall, the palace of the Yards, and the tower of the cathedral. The earl of Caithness, a mortal enemy of the imprisoned earl, was commissioned to subdue this alleged rebellion. With five hundred men he besieged the different posts which the insurgents had taken. He drove the last of them into the castle of Kirkwall, where they stood a siege of three weeks, and surrendered on conditions which were violated. Military execution was done upon many of the unfortunate people who had defended their master's rights, never legally forfeited; the castle of Kirkwall was ordered to be "casten down," and the earl of Caithness even "went about to demolish and throw down the church, but he was with great difficulty hindered and stayed by the bishop of Orkney, who would not suffer him to throw it down."* These occur-

* *Vide* History of House of Sutherland—Spotiswoode—Records of Privy Council and Justiciary, &c.—Laing's History, &c. in Appendix.

rences took place betwixt 1609 and 1614. The earl was in February dragged from his prison into the Court of Justiciary, without receiving any intimation of the crimes laid to his charge. He was accused at its bar, without any previous indictment, of treason, lese majesty, rebellion, and other such crimes; and on his remonstrance, he was indulged with *half an hour* to retire with his counsel into an adjacent apartment, for the purpose of concerting with them the defence he should make. Upon the evidence chiefly of his own son, that the insurrection in Orkney was sanctioned by the earl's permission, although that evidence had been extorted, it is said, by a promise that it was not to be used against the father, and upon other circumstances, twisted and stretched for the purpose, Patrick, earl of Orkney was declared guilty by a courtly jury, and condemned to die as a traitor and rebel. His royal cousin permitted all this, although Patrick cast himself entirely on his justice and generosity; and he was beheaded at Edinburgh in February 1615. His son and associates also suffered death about the same time; and, after all that has been said about his oppressions, it was not for these that Earl Patrick suffered, but because he resisted an arbitrary resumption of what belonged to him of right. In the record, too, of his proceedings among the Northern Isles, it is plain that, if he perpetrated injustice towards the lieges, he did so through the instrumentality of worthless or ignorant and subservient juries.

The record of his trial is extant: it is annexed to this volume: and the perusal of such documents is one of the exercises which should make every man rejoice that he lives in an age when such deeds of darkness and blood may safely be said to be impossible. When "the good old times" are spoken of, it is fit they should be contrasted with the day which is passing over our heads.

After this judicial murder, the earldom and bishopric were separated. Law not only got possession of the whole bishopric, newly modelled, in the first place, but was translated to Glasgow; and the earldom was annexed to the crown.

"The Place of the Yards," including the new building erected by earl Patrick, was added to the bishopric, with a condition that the king's lieutenants, when in Orkney, should be accommodated in it; and, from August 1615, when George Graham was appointed bishop, till the revolution 1688, the earl of Orkney's palace became the residence of the prelates, while Episcopacy prevailed. In 1639, after the famous general assembly at Glasgow, Graham was compelled to resign his dignity and Episcopal rights; and, in a document which was lately found, he expresses his regret to the magistrates of Edinburgh (to whom his rights had been transferred) that his dwelling, for a period of about 24 years, was neglected and injured. This is done in language so quaint, pathetic, and descriptive of those times, that I cannot forbear quoting

it. “Quhen I receivit the bishopric, I receivit *The House* with some gude plenishing (furniture) of beds and buirds, sic as the Erle hade. I delyverit it againe, according to the inventar I receivit it by, in omnibus, to Robert Tullo, upon a charge of the committee. I left it in better order than he receivit it; but now I heare it is both ruinated with the weather, and not weill used be him, qrof ye will pardone me to be sorrie, for I was more than carefull both of the kirk and that house.” “Altho’ there I was not plundered, yet my house was evil pyked by these that had the charge of keeping it. Befoir the generall assemblie at Glasgo, I keepit it with a companie as a non-covenanter, and after that from non-covenanters: betwix the two, I cannot tell quhat I had or quhat I wanted, for I was deadly seik in the meantyme.”* The court book of this prelate is entire; and from it and other records in the district, it appears the courts of justice were long held in “*magna aula Palatii de Yairdis*.” In that hall, and in the cathedral, many poor wretches were condemned for the imaginary crime of witchcraft, to be “wyrried at ane stake, and burnt to ashes.”†

Soon after the abolition of bishops, the revenues of the see of Orkney were given to the city of Edinburgh, (1642.) The earldom having been previously leased out, was gifted to William Dou-

* Rentals, &c. of Orkney.

† Vide Appendix.

glas, earl of Morton, in the form of a mortgage, by King Charles I. for a fictitious debt of L.30,000 Sterling; and, in 1647, his lordship got a lease for 19 years of the palace at Kirkwall from the city of Edinburgh, to whom he paid a nominal rent of only 33s. 4d. Scots. These now roofless walls derive an interest, from reflecting that they were perhaps the last which afforded shelter and welcome and hospitality to the gallant Montrose, in his final and luckless struggle for the house of Stuart. The earl of Morton, on obtaining the grant of Orkney, retired to that remote country, where he died in October 1648, and was succeeded by his son Robert. It appears from the minutes and correspondence of the Committee of Estates, that Earl Robert temporised with them while intriguing for the restoration of Charles II. It was in Kirkwall, that Montrose mustered the last band of soldiers he ever commanded; and some of the incidents connected with his fatal expedition, being altogether omitted in the more formal accounts of Orkney, may be briefly noticed.

In consequence of invitations from Robert earl of Morton, and of arrangements with him and others, Orkney was selected as the point from whence Montrose was to move in an expedition for the restoration of the second Charles. With this view, the earl of Kinnoul and his brother were despatched from Holland with some Scots and Danish officers, and about 200 Danes as com-

mon soldiers. They landed in Orkney in the beginning of September 1649, and were there joined by the earl of Morton, the inferior gentry, and their dependents. Morton, as proprietor of the earldom, and, from the nature of the tenures in that district, then the lord of the whole, assumed possession of the bishopric too, in virtue of a grant, real or forged, from the young king. A few days after, the chamberlain of the bishopric “found the earl of Morton at Kirkwall carrying himself as chief commander of the said forces, whereabout the said earl and the earl of Kinnoul fell out.”* But Morton died on the 12th of November, and, in a few days afterwards, Lord Kinnoul also died, leaving his brother in command, and the troops and levies which were made in Orkney quartered chiefly on the bishopric. The hero of the enterprize, Montrose himself, came to Orkney from Holland only in the end of February, or early in March 1650, rallied and prepared his troops at Kirkwall until the beginning of April, and then embarked at Holm-sound for the mainland of Scotland, carrying 2000 Orkney-men along with him as a part of his force. Having landed in Caithness, he secured the pass of Ord, and took the castle of Dunbeath; and, leaving his brother Henry to embody the Caithness men, who were friendly to his cause, he passed through Sutherland, where no resistance could be made to his advance. On the 27th of April, Halket and Strachan, two officers commissioned by the Estates, came up to his post at

* See his Declaration, App.

Carsbisdail, where Montrose had halted for auxiliaries. They attacked him, and his raw troops were instantly scattered, drowned in the river by hundreds, or slain in the fields by the peasantry. Montrose, having thrown off his cloak, decorated with the star of his order, and, it is said, even flung away his sword in the agony of defeat, escaped with young Kinnoul and six or seven more, and passed among the wilds, without food, into the wildernesses of Assynt. Kinnoul perished in the hills with fatigue and hunger; and at length Montrose, hunted "like a partridge on the mountains," and attended only by Sinclair, an Orkneyman, was seized by the Highlanders, and carried to Ardreck, the house of M'Leod of Assynt.—From the horrid termination of his brilliant course in the hands of fanatic butchers, I return to the circumstances in Orkney connected with its ancient buildings.

"The Covenanters were called Whigamores, of which (says Burnet) the term whig is a corruption. In 1648, the Convention erected themselves into a committee of estates, and welcomed Cromwell to Edinburgh, with the greatest expressions of esteem and regard." After the destruction of Charles I. in 1649, after the extinction of Montrose's heroic spirit in 1650, and the reign of the saints had commenced by the appointment of Cromwell to the protectorship (1654,) his soldiers reached and overawed the inhabitants of Orkney: They built a fort to command the harbour of Kirkwall: fortifications were reared

on the east side of the cathedral, and the earl of Morton was driven from the islands. The usurper's ships plundered through the country; and those men, with "Emanuel" on their banners, committed gross outrages even in the cathedral church. In answer to an accusation by Lord Morton, after the restoration, against the magistrates of Kirkwall, that they had destroyed his seat in the church and otherwise taken part with the usurper, they "denyed any breaking down of the same; and if any pairt thereof was wronged, it was be *the Englishes*, as the pulpitt and the rest of the seats in the church was broken down by thame and brunt.'

During those times of trouble and distraction, however, the venerable cathedral was never entirely lost sight of by some public spirited and patriotic individuals. On 28th June 1633, in consequence of an application to Parliament, an act was passed, (Act. Parl. Carol. I. v. 52.) remitting to the "Lords of his Majestie's Exchequer of the kingdom of Scotland" to advise and consider as to the upholding thereof, and declaring that their directions on the subject should, "in all time coming," have the "strength, force, and effect of ane sentence and act of Parliament." In 1658 and 1659, the bailies, minister, and council of Kirkwall applied to the town of Edinburgh (as tenants of the bishopric out of which the church had been partly maintained,) and other quarters; and various small sums were given by the treasury and the town of Edinburgh for upholding the fabric at different times. On the

restoration of Episcopacy in 1661, the charge of the cathedral came under the cognizance of the bishops; but Sydserf, the first after that event, seemed to consider the burden of keeping it up as devolved on the crown by act of Parliament, except in as far as the quire or place of worship was concerned.* In the time of his successor Honeyman's episcopate, the spire was struck with lightning, and entirely destroyed.† The tower was afterwards covered in with a paltry roof, which still disfigures the building.

It would be an act of injustice not to mention that the Presbyterian clergy of the district, and other individuals on the spot, have always taken an interest in preserving this building. Even in the wild times of the covenant, there are traces of their anxiety for its being upheld; and, since the revolution, it has, in a great measure, been

* Vide Synod Book of the Diocese.

† “1671, Jan. 9.—Quhilk day ther happened ane fearful and sad accident in this place, to the great astonishment and terrification of the beholders, by thunder and lightning, which fell upon the steeple heid of the Cathedral Kirk of Orknay, called St Magnus Kirk of Kirkwall, and fyred the samen, which brunt downwards untill the steeple head, three loftings and all the timber-work pertaining to the bells and the knock-house were consumed to ashes. But, by the providence of God, the bells thereof, being three great bells and a little one, called the scellat bell, were preserved by the care and vigilance of the magistrates, with the help of the town's people, who were very active in that so sudden a mischance, and animated thereto by the liberality of my Lord Bishop, who was present.”—*Cathedral Register*.

kept from falling into utter ruin by the presbytery, synod, and kirk-session of the bounds. In 1770 a memorial was presented to the barons of Exchequer by the magistrates of the burgh, landholders of the county, presbytery, and kirk-session, praying for an annual grant out of the bishop's rents, and stating that the church "has been supported for above these 70 years past by burials, &c. and other small perquisites, not exceeding L.10 a-year." The presbytery, after the revolution, made similar efforts, but ineffectually, as was the case in the later instance. With the scanty pittance arising from the parochial casualties, the ministers of Kirkwall have not only repaired the injuries to which it is exposed in a tempestuous climate, but have made considerable improvements on its appearance. To the present incumbent, the Reverend Robert Yule, the inhabitants of Orkney, and I may say the people of Scotland, are deeply indebted for this service; and to the late Malcolm Laing's memory they owe also a debt of gratitude for having latterly obtained more ample means for this purpose. If ever the historian of Scotland's biography shall be written, it may not be uninteresting to know that he composed his works in the town of Kirkwall,—that he procured a fund for preserving to future times the cathedral of St Magnus,—and that his ashes repose in its aisles among those of the Stuarts and Mortons, whose transactions, in "the days of other years," he has inscribed in the page of history. It was at Mr Laing's

suggestion that his relative, Mr Gilbert Meason, bequeathed L.1000 Sterling, the annual interest of which is appointed to be applied "in keeping in repair the cathedral church of St Magnus." The faithful and economical application of this fund by the trustees since 1805 has enabled them to make some progress in restoring the edifice; and most of the pinnacles on the external angles of the church have been carefully replaced, greatly to the improvement of its appearance.

I wish to notice with delicacy any occurrences of an opposite description; but that is equally necessary, in order to serve as a warning against the repetition of such errors. It appears in one of the local records, that, in August 1701, the magistrates of Kirkwall generally converted the church into a guard-house at the time of their great annual fair. The presbytery describe this "unchristian, and more than barbarous practice," in very graphic terms. They speak of the townsmen "keeping guard within the church, shutting of guns, burning great fyres on the graves of the dead, drinking, fidling, pipeing, swearing, and cursing night and day within the church," and when the clergy were at exercise within it; "neither can the preacher open his mouth, nor the hearers conveniently attend, for smoke;—yea, some of the members of the presbytery have been stopped in their outgoing and incoming to their meetings, and most rudely pursued by the souldiers with their musquets and halberts." A

few years after, (1710,) one clergyman was charged with “ taking his horse through St Magnus’ church, to grass in the church-yard; and another, not long ago, caused tye his horse to a pillar within the church, where he stood all the time of the sermon. In our Saviour’s days God’s house was made a den of thieves, and now these people make it a stable for their horses.”

These indecencies have now ceased to be permitted; but one fellow, within these fifty years, ploughed up the church-yard; and it is only of late that cattle have been prevented from grazing among the graves. The earl’s palace was unroofed by Andrew Ross, a tacksman of the old bishopric estate, and the materials of the roof sold. He also pulled down a considerable part of its walls, and used the stones for inclosing an adjoining field. Other persons followed his example; and, with the tame acquiescence or actual concurrence of his successor’s chamberlains, these ancient edifices, the property of the crown, have been torn down and dilapidated for erecting private houses, or occupied for the foulest, and meanest, and most sordid purposes. A permanent, or rather irreparable injury had very nearly been effected lately, but fortunately was prevented. The magistrates of Kirkwall, kirk-session, and some other gentlemen of the county had projected the erection of school-rooms, county-halls, and various other apartments; and having fixed on the church-yard at the north side of the cathedral as a proper site for their edifice, they proceeded

forthwith to found and build a long row of mean buildings, one end of which reached within 20 feet of the cathedral, and the whole of which would have extended, when finished, as a complete screen, to the height of above 30 feet, along the north-west side of the cathedral. The effect of such a building may be easily figured by looking at the “north-west view of the cathedral at Kirkwall.” The town council, county meetings, and kirk-sessions, all passed resolutions that the proposed new buildings would be an ornament, and nowise detrimental to the appearance of the cathedral; but the Sheriffs of the county, being of a different opinion, objected to the erection, both on grounds of taste and of right,—reported the case officially to the barons of Exchequer, who ordered the work to be stopped; and the projectors finally abandoned their undertaking. The foundation has been completely removed, and it is not probable that any similar occurrence will ever take place, as it is believed most, if not all the gentlemen who pressed the measure somewhat vehemently, and under misapprehension, have now, very much to their honour, acknowledged it would have been injurious to the appearance of the cathedral if their plans had been completed. The Sheriff-depute of Orkney, (now Lord Kinnedder,) in his report to the barons of Exchequer, remarked that the plan “could not have been carried into effect without essentially and irreparably deforming the finest building in Orkney, and, indeed, one of the most

beautiful and valuable reliques of antiquity in Scotland." "In the immediate neighbourhood of it (he continued) are the ruins of the palace of the earls of Orkney, which are now, and long have been, in a very neglected state. Regarding it as a matter of considerable importance and interest to preserve this ruin from farther dilapidation," he recommended a plan for that purpose, which is now in progress, but which at present embraces only the protection of it as a ruin. This, however, is a great point gained. A suitable approach betwixt the Cathedral and the old palace has been opened up, affording, at the same time, a good, and, indeed, the only good access to the town.*

In 1817 a proposal was made to the county gentlemen by some individuals connected with it, to restore what remains of the earl's palace "in its original style and character." The late Lord Dundas, with promptness and liberality, immediately relinquished any claim which he might have to it as connected with the earldom, and subscribed one hundred guineas to aid the project. He was followed by Mr Baikie of Tankerness, who subscribed L.50, and Mr Urquhart of Elsness, who agreed to give L.25. In a short time L.250 were subscribed by a very few indi-

* April 1822. The improvements which have taken place in the vicinity of these ancient buildings within the last three years, by the demolition of various objects which impaired the views, and by planting, &c. are very considerable, and highly creditable to the Magistrates and other gentlemen who have effected them.

viduals. But, from some inexplicable prejudices, in various quarters where these could scarcely have been looked for, one of the subscribers retracted,—imaginary estimates of the expense were exaggerated to five times what it would really have cost,—and little interest having been generally manifested on the subject in the district, the plan has been allowed to slumber. The object was to restore what had formerly been the baron's hall, in which the landholders assembled, and the rights of hospitality were done, and the public business of the district conducted,—and to devote the accommodations which it afforded only to purposes which would not be inconsistent with the recollections of its former history. Having inspected minutely what remains of these roofless walls, which, though uninjured in the main, must soon moulder to absolute rubbish and ruin, I do not hesitate to recommend the restoration of this building, if it can possibly be accomplished. I am well aware of the romantic associations connected with the view of ruins, and, in some instances, they may be more interesting even than ancient buildings preserved and restored. But a ruin in the close vicinity of modern buildings inhabited by living men is incongruous; and, as a general principle, it must be held that it is expedient to keep any monument of antiquity worth preserving, in that state which is most likely to insure its transmission as an object of interest to after-times. Restoration for useful purposes, under proper archi-

tectural directions, is the only way in which the remnant of the palace at Kirkwall can be preserved; and I confess I should like to see that house preserved (so as to endure for ages to come) in which the faithful, brave, and generous Montrose pillowed his head, ere he unfurled for the last time, with his fated hand, the banner of his king among the mountains of Scotland.* But I have lingered, perhaps, too long at Kirkwall, and must now proceed on my way. Before doing so, however, or descending to the more technical and minute details connected with inquiries into Orkney affairs, (interesting chiefly to its own inhabitants,) I shall present the reader with my friend's poetical view of the scenes and subjects on which I have touched in the preceding pages.

* * * * *

* I am aware that some persons are accustomed to view the character of the Marquis of Montrose in a different light, and such persons will think I estimate too highly the qualities by which he was distinguished. In defence, I have only to say, that I have never seen any proofs of his dereliction of principle, and that I regard him as one of the rare instances in the history of Scotland of a man who was really attached to liberty; but, when he found its pretended disciples, under the mask of maintaining freedom of conscience, forcing conformity to their dogmas, (not in Scotland only but through both the sister kingdoms,) manfully withstood the torrent of hypocrisy and usurpation. The Charleses were certainly not wise or correct in all their courses; but the oligarchy of the Solemn League and Covenant was utterly subversive of the constitution.

CHAP. V.

ORKNEY, A POEM.

THE parting beam of autumn smiles
 A farewell o'er these lonely isles :
 Capped with its fire, the mountains soar,
 Like lighted beacons on the shore :
 While far beneath, in depth profound,
 The tides roll through each darksome sound,—
 Those passes where the troubled sea
 Hurries with roar and revelry,
 Where waves dash on in headlong haste,
 By a wide world of waters prest.
 There ruined hall and nodding tower
 Hint darkly at departed power :
 Their domeless walls, time-worn and grey,
 Give dimly back the evening ray,
 Like gleams from days long passed away.

Saint Magnus ! pile of ages fled,
 Thou temple of the quick and dead !
 While they who raised thy form sublime
 Have faded from the things of time ;
 While hands that reared and heads that planned,
 Have passed into the silent land,
 Still hath thy mighty fabrick stood,
 Mid sweeping blast and sheeted flood.
 Above thy tower and turrets tall
 The thunder-cloud hath spread its pall,
 (Oft curtained in whose depths of doom,
 They've stood like phantoms of the gloom,)

And muttered o'er thine airy height
Its bursting accents to the night.
Tho' oft the wild and wintry storm
Hath reel'd around thy quivering form,
The mighty pile still proudly rears
Its head above the wreck of years!

As thro' thy pillared aisles I tread,
Where rest the gone forgotten dead,
Each step a mournful echo calls,
To wander through the dreary walls ;
The sullen sounds they backward throw,
Which falter into whispers low.—
Each tombstone's frail and crumbling frame
Preserves not e'en an airy name :
The lines by Friendship's finger's traced,
Now touched by Time's are half effaced :
The few faint letters lingering still
Are all the dead man's chronicle !

How often have the guests who ranged
Thy sacred labyrinths been changed !
Of crowds who sang their anthems here,
How still each tongue ! how deaf each ear !—
The hearts that with devotion high
Thrill'd to the sway of melody,
And with emotions fervent glowed,
Are as the sullen senseless clod,
And, gathered to each mouldering heap
Of dust and darkness, soundly sleep.

Like giant forms—a dusky line—
Thy columns rest in dim decline :
Wrapt all around with garment green,
Wove by the hand that works unseen,
Thy twilight shade, thy dying light,
Like evening gliding into night,
Throws over all a solemn gloom,
Meet for the regions of the tomb,—

Meet for that silent slumbering crowd,
The wreck, the remnants of the proud.

Beneath thy walls, their earlier day
In school-boy gambols passed away ;
Thy clock, time's stern recorder, tolled
Hours that from day to darkness rolled,
And gave unto the passing gale
That brief, but melancholy tale,
Heard every day, but heeded never,—
“ So much of life is gone for ever !”

And oh ! thy dread and startling bell
Hath pealed on high their funeral knell,
And thy wide-folding doors have spread,
To welcome them when cold and dead !

But thou, like them, must pass away,
Beneath the hand of pale decay ;
Even now thy towering turrets feel
The weight of ages o'er them steal ;
Thy summit, in its airy waste,
Rocks to the rude and rushing blast,
When years that wander o'er thee call
Thy time-struck fabric to its fall,
Thy mouldering columns, lone and grey,
Shall shelter then the bird of prey ;
Each worshipless recess shall be
Place for their frightful revelry.
The raven's hoarse and funeral note
Shall o'er sepulchral ruins float ;
The wailings of the sullen owl,
The wild-dog's lorn and lonely howl,
From desolation's walls be flung,
Where prayers were heard and hymns were sung !

Still doth the ruined Palace stand,
A crumbling relique in the land.—
Tenantless fabric ! huge and high,
And proud in ruined majesty,

The verdant ivy robes thy wall,
Weeds are the dwellers of thy hall,
And in the wind the tufted grass
Waves o'er thy dim and mouldering mass,
And freshly each returning spring
Blooms o'er thy mortal withering.
On darkening piles and waning wrecks
A gay green garment oft is spread ;
For Ruin, as in mockery, decks
The faded victims she hath made !—

With Time and tempest thou art bent,
A drear neglected monument :
Lorn as some frail and aged one,
Who lives when all his friends are gone !—
Where is thy voice of music ?—where
The strains that hushed the midnight air,
When Beauty woke her witching song,
And spell-bound held the festive throng ?—
A narrow and a nameless grave
Hath closed upon the fair and brave,
And all around is deadly still,
Save when, from some high pinnacle,
The raven's croak or owl's wail
Blends with the sighing of the gale.

To me thy fading form appears
A beacon in the stream of years,
Which tells me that my bark doth glide
Swiftly adown that restless tide,
That nought can stem the headlong sweep
With which it hastens to the deep,
Where, as the river meets the sea,
It glides into eternity !

The hoary rocks of giant size
That o'er the land in circles rise,
Of which tradition may not tell,—
Fit circles for the wizard's spell,—

Seen far amidst the scowling storm,
Seem each a tall and phantom form,
As hurrying vapours o'er them flee,
Frowning in grim society ;
While, like a dread voice from the past,
Around them moans th' autumnal blast :
But now, on their forsaken green,
No more is Loda's spirit seen.

Yet not the works of man alone,
Tho' hallowed by long ages gone,
Charm us away in musing mood :
Bear witness each grim solitude !
'Mid Hoy's high shadowy mountain walls,
When mournfully the twilight falls,
There, bosomed in a deep recess,
Sleeps a dim vale of loneliness ;
The circling hills, all bleak and wild,
Are o'er its slumbers darkly piled,
Save on one side, where far below,
The everlasting waters flow,
And round the precipices vast
Dance to the music of the blast.

When winds are hushed and waves are still,
Far o'er the deep each sombrous hill
May see it's huge and gloomy mass
Pictured within the watery glass ;
High in the air each scalp appears,
Bare with the blight of thousand years,
Soaring in naked grandeur proud,
Companion of the thunder cloud ;
And, piercing oft its chambers dark,
Awakes its dread and slumbering spark,
Which, blazing wildly round each cone,
Gleams o'er the waters, and is gone.

There rocks of ages sternly throw
Their shadows o'er a world below,

And, fierce and fast, each dark brown flood
Carreering comes in maddening mood :
O'er the sheer cliffs the waters flash,
And down in whitest columns dash,
Till, far away, we scarce can hear
Their dying falls and murmurs drear,
As, bursting o'er the dizzy verge,
They melt into the boiling surge.

Here, when, perchance, the voice of men
Is heard within the fairy glen,
Deep muttering echoes start around,
And rocks of gloom fling back the sound ;
While, from their fragments, rent and and riv
A thousand airy dwellers driven,
Send forth a wild and dreary scream,
Like such as breaks a fearful dream,
When conscience, to the sleeper's gaze,
Holds up the view of other days ;
Such as of guilty ghost, whose doom
Condemns it nightly to the tomb,
To drop such tears as spirits weep
Above its earthly partner's sleep,
Which, when the dawn begins to spread,
Flies shrieking in the waning shade.

When, by night's mantle hooded o'er,
The heaving hills are seen no more,
Oft, blended with the torrent's dash,
Are heard the thunder's startling crash,
And burst of billows on the shore,
Like cannon's deep and distant roar ;
By echoes answered loud and fast,
That gallop on the midnight blast ;
As if the spirit of the vale,
Heard in his cave the stormy wail,
And, to the tempest rolling by,
Shrieked loud his frightful mockery !

To Rousay's isle I might refer
Wild nature's ardent worshipper :
A temple meet he there might find,
Mid dells of calm and hills of wind,—
Hills of the gloomy brow, that make
A night-shade sadden o'er each lake ;
Where drooping shrubs weep o'er each stream,
That glides away like being's dream ;
And all is still, save on the gale
When wanders by the plover's wail.

But from the vale so still and stern,
Climb we the mountain's crowning cairn,
And round Enhallow's walls of rock
See billows dashing into smoke,
Which rises from their thunder crash,
As cannon's cloud succeeds its flash :
Tossed from the hell of their turmoil,
It dimly canopies the isle.
Oh ! what can match their whelming roll
Save passions racking o'er the soul ?

Oft o'er such waves at midnight swung,
While round these isles the tempest sung,
The skiff's pale crew, thro' mists of foam,
Hath seen some near and peaceful home,
Whose festal radiance o'er the sea
Smiled but to mock their misery ;
Whose casement gleams just gave a glance
Of beauty gliding thro' the dance,—
A view to blast the aching sight
More than a demon of the night ;
Which called up Memory o'er the scene to shed
Her withering tears, when every hope had fled.

Where cairns of slumbering chiefs are piled,
And frown above the waters wild,
Rear their hoar heads, forlorn and dim,
Upon the ocean's lonely brim ;

There the fierce storm and maddening surge
Howl loud and long the warrior's dirge,
And, blended there, together rave
Thro' many a deep and dreary cave,
And waken from their sullen lair
Sea monsters darkly slumbering there.

Seen from those death-towers of the flood,
The ocean's mighty solitude
Widens thro' boundless space around,
Vast, melancholy, lone, profound ;
So vast that thought, with weary wing,
Droops o'er its distant wandering,
And, left behind, again returns
To muse upon the mouldering urns.

But ah ! Tradition, grey and dim,
That once amidst our vales did swim,
Whose hoary form did love to dwell
In still and solitary dell,
Now fades from glen and mountain dun,
Like the wan mist-wreath in the sun ;—
Fades from each little fairy hill,
Each silent lake and murmuring rill,
And rock, and vale, and waters lie
Unheeded by the stranger's eye.

Oh ! that some harp would wake again
Each long-forgotten slumbering strain,
Call its lost echoes to our shore,
And give them to their rocks once more ;
Awake the warrior from his shroud,
To ride upon the stormy cloud,—
Upon the whirlwind's wing to sweep,
Or mount the surges of the deep ;
Make white-maned waves his steeds of foam,
And round the savage islets roam,
Where Pentland's billows burst away
O'er each wild cliff in cloud of spray,

And, falling slow in misty hoods,
Wrap the tall rocks that brave the floods.

And here, as Fancy's flight doth stray
Thro' time's far twilight tracts away,
Methinks the northern lights that fly
Like sheeted spectres o'er our sky,
Might seem the spirits of the brave,
Whose bodies moulder by the wave,
Holding their dance above the shore
Which knows, alas! their names no more,
At midnight deep, when shadows lour
O'er Loda's mighty stone of power.

As the rude brush of evening's wind
Leaves not a lingering trace behind
Of landscapes living in the stream,
(Like the dim scenery of a dream
Called up by fancy's wizzard wand,
When sense is sealed by slumber's hand,)
So Time's drear blast hath swept along,
Alike from record and from song,
Their very names who now lie hid
Beneath each dusky pyramid;
And all that hint of them are graves,
Where the green flag of ruin waves,
Or crumbling remnant of the past,
That ivy shelters from the blast,
And clings to still when others flee,
Like true love in adversity.

Bigswell! within thy valley dark
Heath-covered mounds may still be seen;
The warrior's place of rest they mark,
And feebly speak of what hath been.
But oh! is such seclusion meet,
That hides the graves to honour dear?
Say who shall guide a wanderer's feet
To light the torch of freedom here?

The hills around are dark and rude,
Their shadows frown above the vale,
And thro' the lifeless solitude
No distant sound comes on the gale.
But here the spirits of the dead
May wander undisturbed by man,
Glide nightly round each lowly bed,
And weep beneath the moon-beam wan.
Is it for this that valour sighs?
Glory! thou load-star of the brave,
Like meteor o'er a marsh that flies,
Thou lead'st thy followers to the grave!

'Twas in this valley lone and low
St Clair did meet the plundering foe;—
Short pause was there,—a fearful yell
Shook the recesses of the dell;
Dread Silence started from his rest,—
The eagle from the mountain crest;
Echoes, that many an age had slept,
From their long slumbers wildly leapt,
And Loneliness from her retreat
Fled as the hostile bands did meet.

They met with fire, they met with steel,
They closed amid the thunder peal;
The smoky wreaths ascending, curled,
Were o'er the mountain top unfurled;
Like the black banner which foretells
Destruction to the foe it quells.

But soon the robber's pride was crushed,
And soon his battle-shout was hushed;
And, slow withdrawing from the glen,
St Clair retraced his steps again.
Far on the mountain's side his host
Was in the evening shadows lost,
As o'er the ridge it slowly wore,
Were heard its martial strains no more;

The echoes sought their dwellings lone,
The eagle her own mountain cone,
And o'er the dead man's swelling cairn
Sank night and silence deep and stern.

Tho' desolation's left behind,
The tempests of the human mind
Grow green and traceless to the gaze,
Beneath the silent sweep of days,
When dwellers of the hut and hall
Have gone the darksome way of all.

Yet records rare tell many a tale
To later times of wo and wail,
When Patrick, Orkney's ruthless lord,
Waved o'er the isles a despot's sword,
And made his will the law which gave
Offenders exile or the grave.

And when those fears came on at length,
Which tyrants, even in place of strength,
For ever more are haunted by,—

Thy warnings, dread Futurity!
Then ordered he a chosen band,
As they regarded life or land,
Plots to reveal against him nurst,
A day and night ere such should burst;
And they who failed this end to gain
Would plead obstructing seas in vain!

When musing on those chieftains gone,
As in some hall thou sitt'st alone,
Where on the wall the fitful blaze
Reveals the forms of other days,
Oh! then, as mounts the dusky flame,
They glare in every gloomy frame,
And seem, as light and shade hold strife,
Alternate things of death and life.

While yet this mood of mind doth last,
Wouldst thou hold converse with the past,

Then, by the glimmering moonlight's aid,
Go seek some ruin's sullen shade,
And every wandering sigh of air
Shall seem a spirit's whisper there,
Breathed from its vaults all dark and deep,
Such as where great men go to sleep,
Where in companionship they press,
Yet all is utter loneliness ;
And where the flickering dead-light throws
Its glow-worm shine o'er ghastly rows !

On Nothland's solitary pile
The last blush of the dying day
Plays like a melancholy smile,
And hectic glow on pale decay ;
Such o'er consumption's cheek will stray,
Ere the long night-shade round it lies,
Life's last gleams, ere it wane away,
Its setting sun and evening skies.

The moss of years is on the wall,
And fitfully the night-winds start
Thro' Bothwell's roofless ruined hall,
Like sobs of sorrow from the heart ;
Upon each floor of cold damp sod
The clustering weeds like hearse-plumes nod,—
Thro' chambers desolate and green
Hoots the grey owl at evening's close,—
Meant for far other guests, I ween,—
Where wave-worn beauty might repose,
And find that bliss in love's caress
Which hallows scenes of loneliness.

Beyond that crumbling mass of years
A smooth green hill its summit rears,
And terminates in cliffs that brave
The thunders of the dashing wave,
Which far below, with hideous din,
And hollow groaning bursts, within

The dungeon caverns of the earth,
With dance like madness in its mirth !

When Albyn's men of mountain blood
Rushed down, like their own torrent's flood,
To place the Stuart upon that throne
They warmly deem'd by right his own,
E'en in these isles each nobler heart
Burned in his cause to bear a part ;
But when the cloud of war rolled back,
And, like December's storm-smote rack,
Scourged darkly o'er its dreary sky,
In scattered ruin far did fly ;
When stretched revenge her gory hand,
Against the bravest of the land,
Then found they shelter in those caves,
Where sung to them the winds and waves ;
In safety from the hand of power,
They passed away their darkening hour.

Hail mighty rocks that soar sublime,
Ruins of nature and of time !
Man and his works together pass
To swell destruction's darkening mass ;
But ye remain when they decay,
And winds and waters pass away.

See Hoy's Old Man ! whose summit bare
Pierces the dark blue fields of air ;
Based in the sea, his fearful form
Glooms like the spirit of the storm ;
An ocean Babel, rent and worn
By time and tide,—all wild and lorn ;
A giant that hath warred with heaven,
Whose ruined scalp seems thunder-riven ;
Whose form the misty spray doth shroud,
Whose head the dark and hovering cloud

Around his dread and louting mass,
In sailing swarms the sea-fowl pass ;
But when the night-cloud o'er the sea
Hangs like a sable canopy,
And when the flying storm doth scourge
Around his base the rushing surge,
Swift to his airy clefts they soar,
And sleep amid the tempest's roar,
Or with its howling round his peak
Mingle their drear and dreamy shriek !

The dying day has had its rest
Upon the mountain's lofty crest.
Now o'er the ocean it has fled,
And to the past is gathered.
From stunted shrubs, of foliage bared,
The farewell melodies are heard ;
The twilight spreads a duskier veil
Upon the deep and lonely dale,
And, moaning to the evening star,
The mountain stream is heard afar !

He who misfortune's power hath proved,
And vainly lived, or vainly loved,
Owns with the season and with thee,
Thou stormy land ! a sympathy.
As sigh the winds when leaves are sear,
The dirge-notes of the fallen year,
Feels a stern joy his bosom sway,
As, drear and dim, it wanes away,
And in a blighted world can find
A picture of his own dark mind.

The twilight fades, and night again
Claims from our time her portioned reign ;
Earth sets, and leaves us to admire
Yon vaulted canopy of fire,
Those burning glories of the sky,
Those " sparks of immortality,"

Which shed from high their living light,
And blaze through the blue depths of night.

At such an hour, should music stray
Soft from some isle far, far away,
It seems to charm to silent sleep
The murmurs of the mighty deep :
The torrent, as it speeds along,
Stills its dark waters to the song ;
And the full bosom feels relief,
Soothed by the mystic "joy of grief;"
Upon the heart-chords stealing slow,
It hallows every cherished wo,
And wakes sensations in the mind,
Wild, beautiful, and undefined,
As tones that harp-strings give the wind.

Oh ! at such soul-inspiring strain,
The wondrous links of Memory's chain,
Tho' scattered far, unite again,
And Time and Distance strive in vain.
Again Youth's fairy visions pass
In morning glow o'er Memory's glass ;
At every magic melting fall,
They come like echoes to their call,
And, with the dreams of vanished years,
Steal forth again our smiles and tears.

END OF PART I

Which shed from its shining light,
And gave them the blue light of day.
At such an hour, when the sun
Shone from the east, the sun
It seems to them to be the sun
The sun of the night,
The sun, as it were, the sun
Shine its light to the sun,
And the sun, the sun,
Shone by the sun, the sun,
Upon the heart of the sun,
It shone every child,
And with the sun, the sun,
With, beautiful and bright,
As long as the sun, the sun,

Oh! at such a time,
The wonderful sun, the sun,
The sun, the sun, the sun,
And from the sun, the sun,
Again from the sun, the sun,
In morning glow, the sun,
At every sun, the sun,
They come like the sun,
And, with the sun, the sun,
Shine forth again, the sun,

END OF PART I

PART II.

A
CHRONICLE
OF
Orkney AND Zetland,

AFTER THEIR ANNEXATION TO

Scotland,—1468.

CHRONICLE

ORISKANY AND ZELAND

PART II

CHRONICLE

CHRONICLE

OF

ORISKANY AND ZELAND

CHRONICLE
 OF
ORKNEY AND ZETLAND,
 &c. &c.

CHAP. I.

**THE BISHOPS AND FAMILY OF ST. CLAIR,
 LESSEES.**

THE preceding sketches may, perhaps, afford to some readers a sufficient detail of the more prominent events connected with the transactions in these Islands ; and indeed it is difficult to give any account of the objects which present themselves to the most superficial observer in this province, without introducing various statements of the occurrences which have taken place among these northern isles during a period of above three hundred and fifty years. But there are others who will wish to look beyond the surface,—who, without being insensible to the attractions of picturesque or wild scenery, and the moral vicissitudes which lend an interest to monuments of antiquity and these rocks of the ocean, may also desire to take more exact and methodi-

cal views of what has been given only as a mere outline of a picture. A less popular, and perhaps even a dull and forbidding chronicle, shall now be written, as concisely, however, as possible, for those who are not already satisfied with the foregoing notes ;—and probably to the inhabitants of the district, or others who are in any degree connected with its interests, this cold narrative of gifts, and acts of parliament, and lawsuits, and oppressions, may be found useful,—as yielding, from experience, the best materials from whence to draw inferences of a practical nature. The truth is, and it is fit to be spoken out distinctly,—that the system of government or rather it should be termed of squeezing and impoverishing these islands, from the time of their annexation down to the present day, which has uniformly prevailed, is only to be detected amidst the records of oppression, law-suits, and arbitrary exactions, and pettifogging misrepresentations. From the first to the last of the period referred to, with little mitigation, there has been a constant struggle betwixt the masters of the islands and their inhabitants—and in many respects the rural polity of Orkney and Zetland is still conducted on the principles by which a Turkish province or West Indian plantation of slaves are managed, rather than by the enlightened views and just usages which prevail in the other districts of Scotland. If this statement should be deemed harsh or strong, let the reader form his own opinion after closing the following pages.

It is unnecessary to recapitulate the transactions by which King James III. of Scotland became sovereign in mortgage, and proprietor of the earldom of Orkney in the years 1468, 1470, and 1471.* At that time there was another power in the islands, co-ordinate to a certain extent with that of the King as lord of the islands—namely, the church. “The old bishopric of Orkney was a greate thing, and lay sparsim throughout the hail parochines of Orkney and Zetland. Besyde his lands, he had ye teinds of auchteen kirks: his lands grew daily, as delinquencies increased in the countray†.” Besides the earldom, too, and bishopric, there were many small proprietors—the udallers—whose heritages were intermingled all over both clusters of the islands with those of the earl and bishop, and these paid scats and other articles either to the earl or bishop, and teinds to the latter. The very nature of the mortgage to King James III. by the treaty with his father-in-law, implied the subsistence of the Norwegian laws and customs—and Craig,‡ Buchanan,¶ and other writers, bear testimony to the fact that these were not impaired by the transaction.

The earldom of Orkney and lordship of Zetland having been annexed to the crown by act of Parliament, not to be given away to any but lawful sons of the King, (an enactment probably cal-

• Vide p.

† Bishop Graham's declarations in Rentals, No. 3, p. 21,

‡ Craig, Lib. 1. c. 16, § 14. ¶ Lib. 2, in Lit. James III. anno 1469.

culated to pave the way for a discharge of the right of redemption,) we are told that the King “promoted the advantage of the inhabitants, and both secured and extended the rights of the udallers and freeholders.”* It is difficult to discover what is meant by this statement, as no explanation or authority is given, and there was no such distinction known at that time among the landholders of Orkney and Zetland as “udallers” and “freeholders.” There is no evidence referred to for the farther statement, that “the islands were committed to lieutenants or viceroys, who acted under the king’s commission in the administration of justice, and in collecting the rents for his benefit.”

The first grant by the King of Scotland, of which there is any record, was in 1474,—a lease for two years to William Tulloch, bishop of Orkney:—the crown rent consisting of L. 120 of money, 50 chalders of bear, and 120 salt marts—the bear at 8 merks per chalder, and the marts at a mark each; making in whole L. 466, 13s. 4d. Scots.† The lease was renewed for three years more, with an abatement on the bear, viz. at only

* Dr Barry, p. 234.

† Exchequer Rolls 1474—1478. I am obliged in this instance to take Mr James M’Kenzie’s account of these crown rents, without consulting the original documents myself. But in every case where I have had occasion to examine Mr M’Kenzie’s researches, and to compare them with the warrants to which he refers, I have found them most exact and faithful, and I have no doubt they are quite correct.

5 merks the chalder, the amount being L.366, 13s. 4d.*

On the 28th of April 1748, the lease of the earldom was continued to Andrew, bishop of Orkney, the successor of Tulloch,—the keeping of the castle of Kirkwall being included in the lease, and the same rent being stipulated, *ut in rentalì nostro continetur.*† It was probably during the subsistence of those leases to the bishops, that the mitre and episcopal arms which Barry and other writers speak of, but which have now disappeared, were stuck up on the front of the castle of Kirkwall; and the rental here referred to must have been the “auld parchment rental,” to which allusion is made in that of Lord Sinclair‡ in 1497 and 1503. The earldom estate, however, notwithstanding Dr Barry’s eulogy on Bishop Tulloch, seems not to have benefited by this holy keeping,—for, availing themselves of the facility which an intermixture of lands and rights afforded during a period of 15 years that they were uncontrouled lords of a remote province, the bishops seem to have laid the foundation of those “gripings” and jarrings which arose out of the confused state of property and possession, and which, even to this day, have not been completely allayed by the application of any effectual remedy.

* “It appears by these rolls that, in 1476, and the three years immediately preceding, the bear of Murray, which was amongst the best in Scotland, gave only from L.2, 10s. 8d. to L.4 per chalder.”—*M. Kenzie.*

† Great Seal Register, Book 10. No. 84.

‡ Rentals, No. I. pp. 24, 44, 89.

King James III. was killed in 1488, and succeeded by his son James IV. This high spirited monarch was more attached to warriors than to priests; and accordingly, soon after his accession, a lease of the ancient earldom of Orkney and Zetland was granted (28th May 1489) to Henry Lord Sinclair, a son of that noble house. The rent was continued at the same rate as in the bishop's leases, viz. L.366, 13s. 4d. Scots, as some atonement, perhaps, to the family, for the ill-requited devotedness of his grandfather to the former king. On the 1st of May 1501, this lease to Lord Sinclair, and the keeping of the castle of Kirkwall, with the jurisdictions of justiciary, fouderie, and bailliary, was renewed for 19 years, an addition being made of hams, "for the king's use," to the rental, which was thereby extended to L.433, 6s. 8d.* This Lord Sinclair went with the king to Flodden, where they both fell in battle, 9th September 1513.

During the currency of those leases, the earldom and bishopric having been thereby separated and intrusted to different hands, the evils arising from the previous conjunction then became very evident. Lord Sinclair's rental, discovered lately among the papers of the city of Edinburgh, contains numberless statements of these; and as there seems to be no reason to doubt its authenticity, a few specimens of the encroachments made by

* Exchequer Rolls, 1489—1500. Great Seal Register, Book 13. No. 405.

the worthy bishop shall be given in a note.* This rental, too, while it illustrates the violent state of occupancy which pervaded the district, in consequence of the complexity and singularity of rights, explains also a circumstance which may

* “ Calgarth, &c. of the quhilk the Bishop hes the scattis heirof, and diveris utheris placis in this parrochin, as followis: We wait nocht quhy. And the king and erle ever had the scattis of all the bischoppis land in this parrochin, quhile of lait that Bischop William stoppit the samen.” And various lands are specified, of which the scatts are “ ut supra in manibus Episcopi.” Rental, p. 11. In stating the summa, it is noted “ preter the teinds quhilk the bischop takis suld be the kingis.”—Ibid. p. 17. “ Rannebuster, &c. the quhilk was ever payit to the king, and is nocht in the bischoppis auld rentale, and is tane up be the bischop nevertheless, fra the land come in our soverane lordis handis, *quhen the bischop had the takis of the samin, and sa defraudit the king of the said scattis* before my tyme, and sinsyne in xxij yeiris bigane, that I gat never the scattiis thereof,”—p. 48. “ Stanehous, &c. 6d. terre of the quhilk ane uthale woman aucht the land male of 5½d. terre, and gaif that to the crose kirk in Stanehouse, and the vicar thereof hes halden fra me xxij yeiris bygane and befor the dait heirof; and bischop William Tulloch, *when he had the tak of the kingis land, was the first that ever tuik up the said scattis*,” p. 52.—“ Hangengarth,—I know nocht quha aw the land male heirof, bot the scat suld be the kingis, and thai ar withhaldin be the bischop in my tyme xxij yeiris bygane.” p. 86. See also other instances, p. 68, 71, 74, 77, 78, 80, 84, 85.; and on p. 89. there is the following entry: “ And heir endis all the scattis that the bischop takis in the parochin, and I traist that the bischop has richt to thir scattis, because I found, in the auld parchement rentall, that notwithstanding the land is all the kingis to *the male*, yet ilk three penny terre is laid by to pay scatt to the bishop.” Many more imputations against the bishop for gripping these scatts is to be found in the other parts of the rental.

account for a feud that arose among the St Clairs about their Orkney affairs, and which ended in the destruction of one of the parties. It is stated, that many of "the uthale men held maisterfully, with the peril of law ilk year," certain duties exigible; and many lands are specified as "conquest per Comitem Willielmum," and "Lord Henry," *which were not in the King's rental*, and formed no part of the "auld earldom." In this way the Sinclair family held a lease of the auld earldom lands and revenues, besides an estate of their own,—and the latter became very naturally an object of desire to the Earl of Caithness, who had been preferred by his father to that earldom, while the descendent of his elder brother was only tacksman of the king's estate in Orkney.

Lord Henry Sinclair's widow, Lady Margaret, continued to enjoy her husband's lease in Orkney after he fell at Flodden, and in 1520 it was prolonged to her for 19 years more at the same rent.* It was farther extended, in 1536, for seven years at the same rent,—so that Lord and Lady Sinclair possessed the earldom, or King's estate in Orkney, on leases, betwixt the years 1489 and 1586, being a period of 57 years. But her possession was not uninterrupted,—at least her leases were on two different occasions nearly subverted,—first by open violence, and afterwards by a charter-

* Exchequer Rolls, 1502—1529. Privy Seal Register, Book 10, folio 136.

ed gift of the earldom to the Earl of Murray. There is a good deal of mystery about the precise motives which led the Earl of Caithness and Lord Sinclair to invade Orkney with an armed force in the year 1529. Dr Barry is pleased to say, that the Sinclair family had "voluntarily resigned the earldom, and had received full value, in substantial landed property," for the resignation; and they are gratuitously accused of having lost sight of "both justice and gratitude." But we have a very different story from a member of the family, John, master of St Clair, when in the year 1715 he was at Kirkwall, flying into exile: "I had occasion (says he) to entertain myself at Kirkwall with the melancholie prospect of the ruins of an old castle, the seat of the old Earls of Orkney, my ancestors; and of a more melancholy reflection, of so great and noble an estate as the Orkney and Zetland isles *being taken from one of them by James the Third* for *faultrie*,--after his brother Alexander, Duke of Albany, had married a daughter of my family,—and for protecting and defending the said Alexander against the King, who wished to kill him, as he had done his youngest brother, the Earl of Mar; and for which, *after the forfaultrie*, he gratefully divorced my *forfaulted* ancestor's sister."* Independently of this direct statement, it seems to be very doubtful, indeed, if the landed property which was gi-

* M.S. Memoirs of John Master of St Clair, quoted in Notes to the Lay of the Last Minstrel, Canto 6.

ven to William St Clair for his earldom of Orkney and Zetland, was a full equivalent; and perhaps, when his own estate was arbitrarily forfeited, he was glad to submit and receive any value he could get for it. If John St Clair's statement be correct, it was extremely natural in those times, when the rights of property and the measure of allegiance to the sovereign authority were very ill defined, for the son of the forfeited Earl to attempt a resumption by force of what he reckoned the inheritance of his family; and it was equally so, perhaps, for his cousin and kinsman, Lord Sinclair, the son of Lord Henry, who fell at Flodden, to aid (if he did so, of which I have seen no evidence,) in assuming as a lordship what his mother only possessed by the precarious tenure of a lease. It will be recollected, too, that the Sinclair family had an estate of their own in Orkney, besides the earldom. And it appears that, in 1497, Sir William Sinclair, a brother of Lord Henry, was in possession of several portions of it in the island of Westray.* Whether, therefore, the invasion of Orkney, by the Earl of Caithness and Lord Sinclair, was to resume the entire possession of the earldom, and put an end to the lady's lease and the King's right by force of arms, or whether it was the adjustment of some question involved in the intermixed nature of the rights, and to settle a dispute about a moss or a march which they had in view, or, as has sometimes been said, to extinguish the udal holdings of the ancient inhabitants, and

* Vide Rental, pp. 82, 89, &c.

subject them to feudal grantees of the Scottish crown, it is impossible perhaps to decide, and scarcely fair, without evidence, to condemn any of the parties; but the invaders, whatever their objects were, seem to have been completely routed and slaughtered. Sir James Sinclair, a natural son of the family, and governor of the castle of Kirkwall, with the Orkney men and others under his command, encountered the Earl of Caithness at Summerdale or Bigswell in Stenness,—killed the earl and 500 men, and, Dr Barry says, took Lord Sinclair, with the survivors, prisoners;* while other accounts state that all the

* Dr Barry refers to Holinshed as his authority, to Ben's M.S. and to Wallace. I have not the first at hand to consult, and Wallace is no authority for any thing, as his credulity renders his book a record merely of childish legends. Ben's M.S. as quoted by the Dr. (in his Appendix, No. 7.) does not bear out his statement as to prisoners being taken. "In anno 1527, (says he,) bellum ortum est inter Cathenenses et Orchades: Cathenenses omni vi nitebantur invadere Orchades hastis, telis, sagittis et sonitibus tubarum. Pomonienses vero, dum hæc gerebantur, obviarunt illis atque in monte istius parochiæ (Stenness) apud Bexwell acies simul junxere Cathenenses omnes obversi fuerunt et interfecti, *adeo ut ne quidem unus superfuit*. Sepulchrum Comitis in eo loco adhuc manet: is avus erat istius Comitis nunc viventis (1529). Orcades letitia commoti ob victoriam ad civitatem redierunt Jacobo Sinclero duce. Campus ubi hoc bellum pugnatum est, vacatur Symmerdale." There is now no vestige of a monument of the Earl of Caithness at the place alluded to; nor have I been able to learn who found the dead bodies and clothes mentioned by Dr Barry, or when these were found. In the History of the House of Sutherland by Sir R. Gordon, there is a similar statement, viz. that the rout and slaughter were complete.

Caithness men were cut off. It is difficult to discover the policy, or to reconcile the different parts of the king's conduct with reference to this transaction; for Sir James Sinclair was rewarded, we are told, for his good service done to the king, by a grant of Sanda and Eday, two of the Orkney islands,—whilst it was necessary to procure a respite for Edward Sinclair of Stroma and others, who had assisted in the slaughter. A deceit, indeed, is said to have been practised by the hero of Summerdale, who represented that those two islands were holms or trivial islets; and being afterwards threatened with the royal displeasure on a discovery of the imposture, he is said to have cast himself over a precipitous rock in Deerness called the Gloup of Linksness, and to have perished in the sea. Another edition of the story, (perhaps an error in printing,) makes him commit suicide at Stirling, the 18th of April 1539,—and a letter to Lady Barbara Stewart, his widow, from the King, is quoted to prove that he thus perished,* while in the text Orkney is made the scene of his voluntary death. M'Kenzie, in his M.S. notes, says, that “in 1536, or 1537, this valorous knight fell by accident into the sea, and was drowned, leaving behind him the reputation of a brave man, emulous of nothing so much as the freedom and independence of his country.” But whether he received the gifts alluded to for victory, or by his mis-statement, it is evident he and his family enjoyed so much of it as not to be

* Barry, p. 239.

easily reconciled with the fact that his partizans required a respite from punishment for the same deed. That respite is in the repositories of Mr Laing at Papdale.

The next attempt to possess Orkney, of which we are informed in the public records, was of a more pacific character. During the currency of Lady Margaret Sinclair's lease, the Earl of Murray, (King James V.'s natural brother,) obtained, on the 26th of January 1530, only a few months after the battle of Summerdale, a grant, in the form of a feu, of these islands, the rent being converted into a feu-duty, "extenden. in nostro rental, (says the grant,) ad summam 433 lbs. 6s. 8d." with L.13, 6s. 8d. more in augmentation of the rental. The rumour of this forthcoming grant had probably led the St Clair family and udallers to make the struggle at Summerdale to which we have referred. But this nugatory grant, from whatever causes, fell to the ground, as Lord Murray never enjoyed the earldom under it.

Soon after the period now alluded to, the Orkney islands were honoured with a royal visit,—an occurrence too memorable to be overlooked in the annals of the district. King James

* Sir James was married to Barbara Stewart, (afterwards Lady Lewis,) the sister of Henry Lord Methven, being so designed by Bishop Reid in his lease of Burra and Flotta. Nov. 16, 1550."—*M'Kenzie*. Those islands were afterwards feued to Lady Barbara Stewart by Adam Bothwell, Bishop of Orkney; and Eday was also feued by him to an Edward Sinclair; but whether he was the son of Sir James or not, does not appear.—*Vide Rental, 1595.*

V., prompted by the ardent and adventurous spirit by which he was eminently distinguished, was frequently in the practice of bearing the sword of justice in his own hands ; and, in the turbulent state of his dominions, the name and presence of one who, like him, was “ every inch a king,” bore sway in the minds of the boldest and most rebellious, when mere armed men would have been found unavailing. Animated at once by a generous curiosity to explore the recesses of his kingdom, and to redress the wrongs which were too often inflicted by the proud aristocracy and lawless banditti of Scotland, his Majesty penetrated the mountain fastnesses of his rebellious subjects, and reduced them to the power of his arm and his laws. He seemed to be alive to that sound principle of policy in a monarchical government, that the sovereign should occasionally mingle with his subjects, and, by acts of grace and courtesy, (which can never be done through delegated functionaries,) come in contact with the kindly sympathies and living sentiments of his people. The troubles of Orkney had attracted his notice, and he planned the romantic project of a visit to these, and his more distant ocean territories, the Hebrides and other Western Isles. Accordingly, about the year 1535, having induced his council to suppose he meant to go to France on a matrimonial excursion, he embarked from the Forth in a fleet consisting of five gallant vessels, attended by Lindsay, the most skilful navigator of his day in Scot-

land. Having reached Orkney, the royal squadron was moored in the bay of Kirkwall; and although the house of Stuart and the family now on the throne of Great Britain derived their descent from Ronald of Orkney, King James V. is the only monarch, Scottish or British, who has ever touched the soil of these islands since they were annexed to the kingdom of Scotland. During his stay at Kirkwall he was hospitably entertained in the Bishop's Palace; and while he received the homage of the leal and loyal among the natives, he directed maritime surveys in the intricate navigation of the surrounding seas, and carried off to the seat of justice the more turbulent and dangerous of the inhabitants.

The favourable leases to Lady Margaret Sinclair terminated soon after the king's visit to Orkney, by a general act of annexation and revocation in 1540. "The landis and lordship of Orkney and Zetland, and ye illis pertaining thereto, and their pertinentis," were resumed to the crown, amongst other gratuities, which are enumerated and annexed in very anxious and pointed terms: "And the saidis landis being annext to remane perpetuallie with the crown, may nowther be given away in fee nor franktenement to any personis, quhatevir estate or degre thai be of, without awise decrete and deliverance of ye hale Parliament, *and for the grett reasonable causes concerning the welefair of the realme, first to be avisit and digestlie considerit be the hale estatis.* And albeit it sall happin our souirane Lord that

now is, or any his successouris, kingis of Scotland, to analie and dispone the saidis lordschipis, landis, &c. that the alienation and disposition sal be of nane avale. But it sal be leful to the king for the tyme to ressaif tha landis to his awin use quhenevir it likes his grace, but [i. e. without] any process of law." It would have been fortunate for Orkney and Zetland if this most wise and salutary statute had been acted upon, and that the public weal only had been considered in the many grants which were afterwards given to needy, avaricious, and tyrannical jobbers in politics.

The last lessee of the Sinclair family was Sir Oliver Sinclair of Pitcairns, who obtained two successive leases, extending to eight years, of the crown rights, rents, scatts, and admiralty jurisdiction of Orkney and Zetland, (which had of old belonged to the earldom ere it was annexed to Scotland,) for which he paid an advanced rent of L.2000 per annum. His right expired in 1548. The name of Oliver Sinclair is associated in the recollections of every reader of Scottish history with one of the most humiliating transactions recorded in its pages,—the disloyalty of the Scottish nobles, the dishonour of the Scottish arms at Solway-moss, the miserable captivity of the army which ensued, and which broke the heart of the most generous and just among Scotland's kings. The premature death of James V. and the extinction of the house of St Clair in Orkney may be reckoned cotemporary; and nothing now re-

remains to remind the visitor of the scenes of their former greatness, at their ancient "home," except the rubbish of their castle ;

—————" Where restless seas
Howl round the storm-swept Orcades,—
Where erst St Clair bore princely sway
O'er isle and islet, strait and bay ;"
—" Still nods their palace to its fall,
Thy pride and sorrow, fair Kirkwall ;"—
" And there, in many a stormy vale,
The Scald had told his wondrous tale ;
And many a Runic column high
Had witnessed grim idolatry."*

* On 3d December 1498, William, Earl of Caithness, Sir Oliver StClair of Roslin, Alexander, George, Robert, and Arthur, Elenor (countess of Athol,) Elizabeth, Margaret, Catharine and Euphemia, Marjory and Mary Sinclairs, sons and daughters of William, formerly Earl of Orkney and Caithness and Lord of St Clair, granted a charter to their brother David, "*militi et Foldo Zetlandiæ*," of the lands of Swinburgh, and all the other lands belonging to them in Zetland by the death of their father. This deed was probably the first by which udal lands in Zetland were transferred in a written instrument ; but, except in the particular of being written, it has none of the other characteristics of a feudal charter,—no feu-duty or other symbol of vassalage, and no warrants of infestment, &c. The Norwegian rule of succession seems to have been in force—descent to all the children of the deceased Earl in equal portions ; and the charter is merely a renunciation to one of the sons by all the other sons and daughters.

CHAP. II.

ORKNEY AND ZETLAND GIVEN TO QUEEN DOW-
AGER;—TO THE STUARTS, EARLS; AND TO
BOTHWELL, DUKE OF ORKNEY.

It has been stated by some of the writers on Orkney matters, that the Regent Arran conferred a grant of the crown estate in Orkney and Zetland on Huntly, during a period of fifteen years after the King's death; but no evidence is referred to in support of this statement. On the other hand, a presumption arises that it formed part of the jointure of the fifth James's widow, who had given birth, only a few days before his death, to the unhappy and unfortunate Mary Queen of Scots. On the 10th of December 1543, we find a litigation betwixt Oliver Sinclair and the Queen agitated in Parliament before the Lords of the Articles and Secret Council. M'Gill, the advocate, takes a protestation that whatever their Lordships might do "anent the mater per-seuit be the Queenis Grace agains Oliver Sinclair touching the delivering of the castell of Kirkwall in Orknay, should turn him to na prejudice anent his ryt, takk, and assedation quhilk he has of the samyn," and objected to the competency of the Court; but they repelled the objection, "be-

cause the action concernis the Quenis Grace, quha has the samen privilege as our soverane lady, her dochter, has in that behalf." The cause was resumed the day after ; and the record bears, " That quhare hir Grace optenit ane decret of the Lordis of Counsale decerning and ordaining hir Grace to be answerit and obeyit of the males, fermes, profettis, and dewiteis of all lands and lordschippis, and sicklik of all castellis and houses gevin and grantit to hir in dowrie be umqhuelle our Souerane Lord,"—" not the less the said Oliver hes and withhaldis fra hir Grace hir castell of Kirkwall, lyand within the lordship of Orknay, and will not deliver the samyn to her without he be compellit ;"—" the Quenis Grace being personalie present, and the said Oliver Sinkler compearand by Maister James M'Gill," who denied that Oliver or his servants had refused to give up the castle, a term was allowed the Queen-dowager to prove the fact. At a subsequent sederunt, the Queen being present, and neither Oliver nor his lawyer appearing, he was ordained to " deliver to the Queen's Grace or hir factors, hir said place and castell of Kirkwall," as he had not appeared to shew cause why he should not have previously done so, having denied that he retained it ; " howbeit the said Oliver and his factors hes and wt.haldis the samyn as yit, as was cleerlie preivit befor the saids Lordis."*

* Vide Acts of Parliament, Vol. II. ad an. 1543.

The Queen-dowager having thus, immediately after her husband's demise, got possession of these islands as her "dowery," we may safely conclude that she retained them till the time of her death on the 10th of June 1560. And, therefore, the story of the grant to Huntly must go for nought. From the time of her death till 1565, that they were given to Lord Robert Stuart, a natural son of James V., there are no accounts of the manner in which the earldom was bestowed or its revenues collected. And the only fact known with respect to her administration in these islands is, that, among other acts of her general government when she was called to the regency, her appointment of Bonot, a Frenchman, to be governor of Orkney, was extremely unpopular.

As the various grants to Lord Robert Stuart and his son, with the consequences which have followed, and the constructions which have been put upon them, introduced into the Orkney and Zetland islands a most essential innovation in the nature of the land-rights of the whole district, (to a very considerable extent, at least,) and as the alterations and tenor of the earldom charters enter very deeply into many points, affecting, even to this day, the most important interests of individuals and the whole district, they shall be ingrossed at full length in the appendix. At present they are not to be seen except in a detached and mutilated state, in law-papers, or by a laborious research to parties in-

terested ; and although an abstract of the substance of those deeds shall now be offered, it is impossible, perhaps, to give that with such perfect fidelity as to convey the full meaning of the original documents, to which it is at all times satisfactory to apply. I have seen it stated in some of the law-papers connected with the disputes of Orkney, (on which, however, little reliance can be placed without recurring to evidence,) that, previously to this grant to Lord Robert Stuart, numerous charters, on the feudal principles of the law of Scotland, were granted of lands in Orkney and Zetland, during the minority of Queen Mary, in favour both of the native udallers and of Scotsmen who had settled among them ; but I have never seen any of those charters. And, indeed, those to the bishop of Orkney of the bishopric estate in 1490 and 1501, with the Popish confirmation of Bishop Reid's new erection in 1545, and a separate one of the island of Burray, dated 22d February 1494, are the only charters from the crown of Scotland, prior to Lord Robert's grant in 1565, which have come under my observation, with the single exception of the burgh charter of Kirkwall in the time of James III. and confirmation thereof by James V.*

By his first charter, Robert Stuart acquired, May 26, 1564, a written title “ to all and whole the lands of Orkney and Zetland, with all and sundry the isles belonging and pertaining thereto, with all and each of the castles, towers, for-

* Vide Appendix.

talices, woods, mills, multures, fishings, tenents, service of free tenents, with the whole superiority of free tenents, advocacy, donation of churches, and with the office of sheriff of Orkney and sheriff of the Fouldrie of Zetland." The estate thus conveyed was to be held in feu of the crown for payment of a feu-duty of L.2000 per annum, (being the rent formerly paid by Oliver Sinclair,) with 10 merks more in augmentation of the rental, being in whole L.2006, 13s. 4d. Scots.*

In order to ascertain the legal effect of this grant, it is necessary to recollect that, by the first act of annexation to the crown of Scotland, the Orkney and Zetland islands were expressly declared, in as far as the crown was interested, unalienable therefrom to any person except one of the King's sons born in lawful marriage; and that, by the subsequent act of annexation (1540) they were again declared unalienable from it unless by a *previous* act obtained in full Parliament, and for the public weal of the realm, any grant by the reigning monarch or any of his successors, in violation of that act, being declared null, and revokable without any form of law process. These statutes were unrepealed and in full force at the date of this grant to Robert Stuart; and his charter carried along with it a radical, inherent, and incurable nullity; because he was not a lawful son of the King, and because there was

* Vide Charter, Appendix.

no *previous* act of dissolution, or even a pretence that it was an alienation beneficial to the public.

But, besides this insuperable objection, the grant was inept on other grounds. It conveyed to him, in terms, *the whole* lands and islands of Orkney and Zetland, with the pertinents, the superiority over the free tenants, the patronage of churches, and the office of sheriff. But the whole lands and islands of Orkney and Zetland did not belong to the crown of Scotland to gift away. The sovereignty did indeed belong to the Scottish crown, and the earldom estate, but nothing more, except the power of appointing sheriffs or other officers for maintaining its government. The church had a very extensive estate throughout the whole islands, much older and better guarded than that of the Scottish crown itself in the earldom estate and sovereignty; and that right of the church was distinctly recognised by the charters to the bishops in 1490 and 1501, in which the church estate is erected into a regality, with the usual jurisdictions, with the patronage and advocacy of all churches and chapels, the scats, and all other rights, as of old enjoyed by the prelates and other churchmen. The ecclesiastical arrangements of the bishop, Reid, in 1544, and confirmation thereof in 1545, afford evidence of the perfect state of activity in which the rights of the church then were; and these rights neither were nor could be affected by the unwarranted and nugatory charter to Robert Stuart.

Besides the earldom and bishopric, the ancient landholders of the island, the udallers, had numerous estates in Orkney and Zetland, enjoyed by them and their fathers, for ages, according to the laws of Norway. Those proprietors held their lands *pleno jure*, without written title or any document of right except possession; and all the institutional authorities on the law of Scotland, (except Bankton,) are of opinion that the udal right is exactly and essentially opposed to the feudal, although, at an early era in the history of the latter system, the creation of a vassal's right was extremely simple, and consisted of the superior giving possession, without writing, in presence of the *pares curiae*; a process deemed by Bankton to be analogous to the simple recognition of an udalman's rights by the lawmen and "neighbours" of the district. This seeming of an analogy is however defective in one essential point, namely, the symbol of vassalage, the service, or the feu-duty, which never were given by the udalmen to any over-lord as the test of a feudal tenure. If there be any truth in history, or any such thing as national faith, the laws and usages of Norway were preserved entire in Orkney and Zetland when they were pledged to Scotland; and if there be any thing in the doctrine and statutes of the law of Scotland, the udal and the feudal modes of holding landed property are totally dissimilar. The udaller, indeed, paid a tribute or land-tax to the King of Norway as a contribution to the national expenditure;

and the term *scat*, by which it is indicated, is just the Norwegian vocable for tribute; but neither in the mother country, nor any of its provinces, ancient or modern, Iceland, Feroe, Orkney, and Zetland, does the term imply any right of feudal superiority in the monarch, or any power to destroy or suspend the udal rights of his subjects, acquired in the remotest ages, and transmitted through successive generations. The kings of Norway could not transfer, and therefore the kings of Scotland could not acquire, the rights of *feudal* superiority over the udalmen of Orkney and Zetland, without their own consent; and as they held their estates free and independently of those kings, (paying only their scat or land-tax,) the grant to Robert Stuart of the *whole* lands in Orkney and Zetland, with the *superiority* over the free udalmen, was a deed entirely *ultra vires* in the crown, and in its own nature intrinsically null and unlawful. Nor is it unnecessary, *even now*, to keep this constantly in the view of the inhabitants of Orkney and Zetland, and to recollect the fundamental distinction betwixt the feudal and udal holdings; for the proprietor of the earldom, founding his plea on the very grant now under consideration, and others which followed it, attempted, more than two hundred years after its date, (in the year 1771,) not merely to wrest from all the freeholders of Orkney who had chosen to enter themselves as crown-vassals, their political privileges thereby acquired, but strove most strenuously to subject

them, and also the independent udallers, to the hardships and expense of a feudal entry with him, attended by all its casualties and burdens. And, at the present day, he is maintaining a doctrine by which, if he succeed in it, a variety of burdens will be transferred entirely from his own shoulders to those of the landholders, which can only be done on the assumption that the proprietors of udal lands have lost entirely the privileges thereto belonging, and that the hypothetical superiors are to be entirely exempted from their proper share of several public burdens. The absolute nullity of the first earldom charter ought therefore to be remembered.

This grant to Robert Stuart was soon destined to fall before the gifts conferred on a greater favourite. When Queen Mary espoused James Earl of Bothwell, she created him "Duke of Orkney;" and the contract of marriage dated the 14th of May, 1567, contains a clause in the following terms: Her Majesty "sall in hir nixt Parliament grant a ratification, with avise of hir Three Estatis, (quhilk hir Majestie sall obtene,) of the infeftment maid be hir to the said noble prince, than Earle Bothvile, and his airis maill, &c. quhilkis failyng, to her Hienes and hir crown to return, of all and hail the earldome, lands, and islis of Orkney, and lordship of Zetland, with the holmes, &c. advocacion, donation, and richt of patronage of kirkis, benefices, and chaplanaries of the samyn liand within the sheriffdom of Orknay and foudry of Zetland, respective," with the office of

Justiciary therein, and its fees,—all “erectit in ane haill and free dukry, to be callit the dukry of Orknay *for ever*.”* This grant, it will be observed, is more guarded in its terms, than the one to Robert Stuart. There is no mention of *the whole lands and islands, and superiority* thereof,—but only the earldom lands and isles; and there is reason to believe, that about this time the charter to Robert Stuart was found to be void, inconsistent with the public law, and in its aspect, if not in its effects, destructive of the rights of the whole landholders in the district. Bothwell’s infestment, if ever it took place as provided for in his contract of marriage, was not followed by long possession; for on the 15th of June, exactly a month after his marriage with the Queen, he fled from Carberry-hill; and his dukedom of Orkney, instead of continuing, dissolved for ever.—A few months after, viz. on the 6th of December 1567, a question seems to have been agitated in Parliament, “quhider Orknay and Zetland sal be subiect to the commone law of this realme, or gif thai sal bruike thair awne lawis?—when it was found that thai aught to be subiect to thair awne lawis.†” This was a distinct recognition of the original udal rights, which, even in the grant to the sovereign’s husband and the highest subject in Scotland, were not attempted to be infringed.

Robert Stuart, who was commendator of Holy-

Vide Appendix to Laing’s History of Scotland, Vol. IV. p. 238. Feu-duty L.2000 Scots.

† Vide Acts of Parliament, Vol. III, p. 41.

roodhouse, and Adam Bothwell, bishop of Orkney, found it mutually convenient for their secular purposes to exchange the temporalities of their respective benefices ; and they accordingly exchanged them, while Lord Robert held his right to the earldom, so that he united in himself the right both of the Earl, or the Crown—and of the bishop. When his grant of the earldom, (without ever having been ratified in Parliament, as far as can be discovered,) was taken from him for Bothwell's use, he, a short time before the Queen's marriage, got a right to her Majesty's third of revenues of the abbey of Holyroodhouse, for his children, during their lives, or a pension of L.990 of money, with 9 chalders 4 bolls of wheat, 13 chalders 8 bolls of bear, 11 chalders 11 bolls of oats, and 1 chalder 5 bolls of meal.* He was thus prevented from clamouring at the recal of his grant of the earldom of Orkney.

It does not appear, from evidence yet seen, that he had any concern with the crown estate in Orkney for 14 years,—betwixt 1567 and 1581,—although it has been said Lord Robert *resumed* possession after Bothwell's disgrace. But, from the narrative of an act of Parliament in the latter year, we may infer, that its revenues had been collected for behoof of the crown during that interval. The substance of that act shall now be stated,—keeping in view, that it was passed dur-

* Vide Acts, Vol II.

ing the King's minority, as he was not of age for six years thereafter, viz. until 8th July 1587.

The act of ratification by King James VI. in favour of Lord Robert in 1581, proceeds on a preamble, that the gift by Queen Mary, after her minority, of the Orkney and Zetland Islands, &c. having been considered by Parliament, it was concluded that the same was made "after dissolutione maid in plane Parliament of the annexation of the said lands to the crown, that the samin might be set in feu-farme to the said Lord Robert Stewart, and his airis forsaid, as our said Sovereign Lord, be the avise of the saids Thrie Estatis hes clearlie and sufficiently tryit, (a statement of which there is not the slightest evidence in the records of Parliament :) Thairfoir, our Souerane Lord and his said Thrie Estatis, in plane Parliament, haif ratefiet, approvit, and confirmit, &c. the said infestment of feu-farme in all the clauses, pairts, articles, and circumstances thair-of." The act farther found Lord Robert's grant for the good of the realm,—that it was inconsistent with an act of James II. anent alienations of crown property,—and declared that the same should be "irrevocabill" "in all tymes hereafter, and that the *mention* of the said dissolution contenit in the said infestment, and in this present act, sall, in all respects, be as sufficient as if the original act of dissolution were shawen." In addition to the boon, like Queen Mary's grant, all the jurisdictions of sheriffship and foudrie, and whole casualties, unlaws, and escheats were given

by this act—"the haill superioritie of the frie-haldairs"—and a long list of privileges and pertinents therein, erected into an earldome and lordship, to be called the earldom of Orkney and lordship of Zetland—the said Robert and his heirs to be styled, "in all tymes heirafter, erllis of Orknay and lordis of Zetland."* In an act of revocation passed the same day, a little before this routine ratification, the gifts by Queen Mary to Lord Robert and his children, of Orkney and the thirds of the abbey of Holyroodhouse, are excepted.†

To complete the tissue of inconsistent gifts and revocations, King James VI. on the 9th of July 1587, on attaining majority, passed an act of Parliament for a dissolution of annexed properties, (the lands of the earldom of Orkney, with the ilis pertaining thereto, being of the number,) for the purpose of being let out of new, on an augmentation of the rental; and immediately afterwards another act of general revocation was passed of every grant whatever made by him during his minority, by his mother, and by their predecessors, to the prejudice of the crown, and in violation of the numerous acts of annexation. This swept away entirely all the grants, infestments, and acts in favour of Robert earl of Orkney, and the earldom, with all its rights, was resumed by the crown; and, as if to put an end to all doubts upon that point, there is, the same day, a separate

* See Acts, Vol. III. p. 254. ad an. 1581.

† Ibid. p. 245.

act "anent the benefices presentit be the erle of Orknay,"* which narrates that the said erle, under his infestment from Queen Mary, "presumes and takes upon him to dispone the provostrie of Orkney, &c. so that yr.by he will pretend na less title and richt of patronage *to the bishopric* of Orknay quhen the samin sall chance to vaik," and therefore it is statute that the "samin (church benefices,) *remane* at his Hieness disposition and presentation."

After being thus resumed, and the charters of Lord Robert Stuart over the earldom of Orkney annihilated, it was let out for about two years to the Lord Chancellor and Justice-Clerk, for L.4000 Scots per annum ; but those persons having relinquished their lease, Lord Robert obtained from his fickle kinsman a new grant on 1st of April 1589, at the former rent, with an addition of 100 merks in augmentation, being in all L.2073, 6s. 8d. This was soon followed (11th March 1591,) by a new infestment in favour of his Lordship in liferent, and his son Patrick in fee, whom failing, to certain persons therein named. But he did not long enjoy this gift, which was ratified by Parliament 5th June 1592,† and he died in the course of that year, as appears by a submission and decreet-arbitral thereon, betwixt his widow, Lady Jane Kennedy, and his son, Earl Patrick.‡

* Acts ad an. 1587, p. 489.

† See Acts, Vol. III. p. 589.

‡ See Books of Council, Nov. 1594.

The terms of his final grant of Orkney and Zetland differ materially from the first one by Queen Mary to her brother Robert, and some of the subsequent deeds ; and although I have seen it stated in some of the law-papers, that King James's charter of 1st April 1581 confirmed Queen Mary's charter, &c. and that the last-mentioned charter, and, consequently, Queen Mary's, were ratified by the act 1592, this seems to be a mis-statement, intended for the purpose of enabling the earldom proprietor to resort to the first charter of the Stuarts as a proof of the earldom rights : whereas, in truth, every charter prior to that of 1591 had been cancelled by act of Parliament ; and that one, with the act of ratification following upon it, thus constituted the sole title of the earls of Orkney, and defined the measure of their rights. The earldom is thus described in the charter, as narrated in the act of ratification : “ All and hail the erledome of Orkney and lordship of Zetland, mayne lands, iles, holmes, with the castell of Kirkwall, milnes, &c. rights of patronage of all and sindrie prelacies, dignities, parsonages, vicarages of kirks, prebendaries, &c. chaplaneries, and of all otheris benefices ecclesiastical, foundit and lyand within the foresaid *erledome* and *lordship*, alsweil the patronages qhulk pertinit to our said soverane lord and his predecessors of auld, as qulk pertinit to ecclesiastical personis, and were laitlie devolvit in his Hieness hands be ye lawis and constitutionis of this realme, wt. tennents,

tenandries, service of frie tenants, and utheris, particularlie contenit in the said infeftment," which are erected into an earldom, with the offices of justiciary and sheriffship of the said earldom and lordship, with perquisites. The ratification is of the charter as thus conceived: declaring the same to be for the good of the realm, and that the last infeftment should be as effectual as if it had been preceded by an act of dissolution, and with power to take a new infeftment posterior to the act. The act too contained a special clause, that "the richt of patronage of all the benefices within Orknay and Zetland" had remained with Lord Robert "fra the tyme of his first infeftment," and the same was appointed to remain with him in liferent, and Patrick in fee, "in all time cuming," notwithstanding any revocation or act of Parliament, "at any tyme heirtofoir, befoir the dait heirof." This title does not convey the *whole* lands and isles of Orkney and Zetland, nor the feudal superiority over the landholders, nor the udal-lands belonging to them, nor the bishopric estate, (except the patronages which the Reformation had thrown into the hands of the Crown); nor, in short, does it allude to Earl Robert's *first* infeftments, except with respect to the single item of patronage.

After Earl Robert's death and another resumption made by the Crown, Patrick got a new crown charter on the first of March 1600, and on the 25th of May thereafter he also got a crown-charter of the bishopric of Orkney; so that

the earldom and bishopric, and the right to all the pertinents of both estates, were thus concentrated in his person.* It is from these two charters, as the summit of Earl Patrick's power in Orkney and Zetland, that we are now to survey the transactions in the islands; and let it be remembered that the last charter of the earldom, like some of those to his father, bound him, in the most explicit terms, to administer justice in the islands according to the peculiar laws of Orkney and Zetland,—thus affording the most complete evidence that those laws were at the time in force, and sanctioned by the Scottish government.

* The last grant to Earl Patrick will be found in the Appendix, but his charter of the bishopric is too long to be inserted, as it enumerates in detail the different parcels of land over the whole country which at that time formed the bishopric estate. It is, however, in the Register-house, Edinburgh, in a state of perfect preservation.—Vide Extract from it, Appendix to Rentals, p. 86.

CHAP. III.

REVIEW OF THE EFFECTS OF GRANTS TO THE
 EARLS OF ORKNEY, ROBERT AND PATRICK
 STEWART—RENTAL 1595, PRO REGE ET EPIS-
 COPO—AND NEW ARRANGEMENT OF THE CROWN
 AND CHURCH RIGHTS IN 1612-14.

THE Earls of Orkney, Robert and Patrick Stewart, held possession of Orkney and Zetland, as detailed in the preceding chapters, for a period of fifty years, from 1565 to 1614, with the exception of those intervals which were produced by the frequent changes on their precarious times; and, during a part of that long tract of time, they also occasionally got their hands on the extensive property of the church. It may therefore be of use to advert for a little to the effects which those grants produced on the district and the condition of its inhabitants, ere we follow the stream of mischief in these islands farther in its progress.

The powers conferred on Lord Robert were of the most dangerous kind, and were too extensive to be entrusted even to a good man, in such

a state of society and property as existed in the islands at the period referred to, or indeed at any time. This authority was almost royal by his charters ; and, amidst the poverty and ignorance of a barbarous age, and in an obscure province, the extent of his will, and the length of his sword, were probably the chief principles in his code of law. The documents which have been preserved with regard to his system of management are few, but forcible.

On 31st January 1575 there is a minute in the Privy-council record, from which it appears that there were “ mony and divers complaints maid be sundry inhabitants of the countries of Orknay and Zetland, and otheris our Sovereign Lordis lieges resortand thereto,” that “ not only are they heavily troublit, herreit, and oppressit be companys of sudartis (soldiers) and otheris brokin men now remaining in the said countries, dependaries upon Lord Robert Stewart, bot als are sa holden under thraldom and tyranny that they can have na passage neither be sea nor land to repair to thir parties to complain hereupon and seik redress and remeid be the course of justice, or yet to do others their lawful errandis and business as our Sovereign Lordis frie lieges, be- and expressly inhibite thairto be proclamatioun, and the ferries and all otheris common passages stoppit be the said suddartis and otheris beand charge of the said Lord Robert, quhairthrow the said countries and inhabitants thair of is ables to be all utterly wrakit and herrit for ever ;” and

therefore the Council ordains a charge to be given to the persons accused to desist from such oppressive proceedings, under the pain of rebellion. The same year he is accused, at the instance of a Nicol Oliverson, of having first served him heir, by an assize, to his father, Oliver Rendal, in the udal land of Gairsay, and afterwards, in his absence, served another person heir to the same property; to which the Earl's answer was, that "albeit the said Nicol was tried to have right by assize to the said lands, yet it was with reservation to all others pretending right thereto to persue the same by law; and so, by another assize given thereafter, the said Nicol was found to have no right to the said lands, but the same to pertain to the said Lord, by the law and practick observed in Orkney." The "books of the said law, together with the process and sentence pronounced by the said last assize," were ordered to be produced; but nothing farther appears on the subject.

On 24th April 1577, a commission was given by the King to Mr William Moodie of Breckness and William Henderson to go to Shetland, in order "to inquire into the truth of the many high attempts, inordinate oppressions, and new exactions daily committed upon and complained of by the inhabitants of Shetland;" and those persons produced to the Regent and Council "the haill complaints of the inhabitants of Zetland given in to them, with their proceedings, examinations, and trials thereupon, conform to the said

commission ;" but no particulars are stated, and the documents are all lost,—nor does any thing farther appear in the record till the 5th of August thereafter, when Lord Lindsay of the Byres and his son are bound as sureties for Lord Robert Stewart, "that he shall remain in ward within the palace of Linlithgow," till he be freed by the King, under the penalty of 10,000 pounds ; and thereafter, on 30th January 1578, he got permission to go to Orkney, on security to the same amount that he would return and undergo trial on the last day of September. In October the same year the King discharged the bond, and ordered it to be cancelled ; and thus the complaints of the islanders, whether well or ill founded, were stifled, and all evidence of his misdeeds destroyed or concealed. There is little doubt that he carried matters with a high hand ; and, among other things, his introduction of a number of Scots retainers into these islands, (from whom some of the principal families in the country at present are descended,) could not fail to excite the Norse prejudices and antipathies against him. To those sources, coupled, no doubt, with some facts, we ought to ascribe a good deal of the traditional odium which is still associated with his memory among the inhabitants of the province.

Of Earl Patrick's oppressions we have very little good evidence, because, although there was great clamour and much threatening, his persecutors never brought proof of their averments ; and all the documents which have been pre-

served on the subject seem, by a very natural revolt of the human mind against oppression, to place him rather in the situation of a victim than a perpetrator of injustice. His answers to the accusations against him are generally cogent and satisfactory, and to no charge more completely so than the oft reiterated one with respect to shipwrecks. He has been represented, in every superficial publication since the time of Spottiswood, to have been so inhuman as prohibit the islanders, under severe penalties, from assisting ships in distress; whereas the truth is, that he merely forbade unwitnessed plundering, (for which he was made responsible,) and directed assistance to be rendered to mariners in distress under the eye of a proper officer, in order to prevent mischief. That he committed outrages, and was extremely arbitrary in his island dominion, is very probable; but we have nothing on the subject on his trials except unsubstantiated accusations; and it is rather an equivocal proof of his unpopularity that 500 Orkneymen rose in arms in his behalf, and fought and suffered for him and his chartered rights. The sacrifice of so many persons along with him is of itself one strong instance of the evils resulting from grants to the lords of Orkney and Zetland—and as such may be fairly stated.

Besides the details of his proceedings in Zetland of doubtful legality, as recorded in his court-book still extant and already referred to, the rental of Orkney pro Rege et Episcopo, made up

in 1595, and afterwards (1612) lodged in Exchequer by Bishop Law, presents to view a number of cases of very questionable aspect. There is scarcely a parish in which there are not numerous instances of lands being escheat to the Earl for witchcraft—for theft,—and for the owner being found in the flood-mark drowned ; and these forfeitures occur so often, that although they might possibly admit of an ingenious defence on grounds applicable to the law and the prejudices of those times, yet it is impossible, with all due allowance for change of times and sentiments, to think of such numbers of deliberate murders, under the mask and form of legal proceedings, without horror. The offences which were deemed sufficient to incur such penalties, were in reality so trivial, that the awe of power must have been often employed to procure and pervert evidence,—to pollute the juries, and to terrify and demoralize the whole population. A more pitiable state of society can scarcely be contemplated ; but the evil is not to be wholly ascribed to the Earl or the ministers of his tyrannies : the error lay primarily with the Government of Scotland in clothing them with the power. The story of Earl Patrick is not without its moral, after the lapse of two hundred years.

And here, while taking a retrospect to his possession of Orkney, and the records of his proceedings, it may not be improper to point out the evidence which has recently been found in support of the authenticity of the rental made up in his

time, viz. that of 1595; which may, in some sense be reckoned a charter of their estates to all the land-holders in Orkney, and a permanent record of their fundamental rights, to which they now must have recourse in adjusting or maintaining their several interests. The contemporary evidence only shall be noticed here, as that which belongs to subsequent periods will be adverted to in its proper place.

Having been required, in the year 1819, to make some official reports relative to the ancient bishopric, I was induced to inspect in the Register-house what is vulgarly called in the country and law papers, "Bishop Law's Rental" (or the "*Rentale pro Rege et Episcopo*") of which I had read a great deal in the voluminous papers about the teind processes of Orkney. The statements with regard to it were diametrically opposed to one another; and it now appears that it formed the chief topic of litigation betwixt Lord Dundas and the Orkney heritors, from the year 1777, downwards, while all this time the original document had never been examined with any care during any part of that period. The heritors, on the one hand, maintained that it was made up in the years 1598, 1601, and intervening years; that it was *certified* and given into the Exchequer by Bishop Law in 1612, as a clear and distinct rental made up by himself of the whole of Orkney; and that it was the rental referred to in all subsequent feu charters within the district: On the other hand, the proprietors of the earldom re-

presented it as a parcel of loose blotted sheets, full of interpolations, erasures, and alterations, destitute of all marks of authenticity, and of no authority whatever in reference to the charters of the earldom, or the question of teinds involved in the plea betwixt them; and that an abbreviate of it, digested by Hay, Morton's factor, in 1727, long after many charters were granted, and which did not distinguish the teinds, was the true standing rental of earldom and bishopric.

On examining the original, I find that none of those statements were correct, but that the rental in dispute had been made up in the year 1595, about eleven years before Law was bishop of Orkney, and while Earl Patrick held the whole country: that it was not certified by Law as a correct rental, but only the ingiving of it to Exchequer was certified by the clerk-register;—that it was not a parcel of loose sheets, but a compact small book, in good preservation;—that though there were some additions on the margin, and interlined, these were evidently done at a subsequent period, and did not in the least affect its original substance and authenticity:—finally, I perceived, that instead of being unauthenticated, *it was signed at the end “Maister Johne Dischington,”*—a name with which at the time I was unacquainted, but which I soon ascertained to be that of the Sheriff and Commissary of Orkney at the time the rental was made up. This is proved, in the first place, by the court-book of the Earl of Orkney 1602 and 1604, in the Register-house,

where Mr Dishington appears as the officiating judge when the Earl himself did not preside,* and also from various contracts, infestments, &c. to which he was a witness. The rental, therefore, was a public record, made up judicially by the Judge-Ordinary, containing all the scatts, land maills, teinds, and burdens of the whole of Orkney. Being made up, too, at a time when there were very few charters in the country, it constituted perhaps the only authentic written register of the tenures and of the burdens attached to every parcel of land within the Islands. Whether a similar record of the Zetland tenures was framed at the same time I have never learnt, although it is extremely probable. We shall have occasion hereafter to note some farther evidence, amounting almost perhaps to complete proof, that this rental is the standard record of the permanent land rights and burdens of the olden time. Without anticipating the proofs given in subsequent years, I may remark merely, that in one very important respect it coincides exactly with Lord Sinclair's rental 1497—1501, viz. in the description of each *Town land*,—as, that it is an uris or 18 penny land, a nine penny land, or of some other specific denomination; thus fixing the total extent of each parcel, and forming the basis of all subdivisions of those several towns among the respective proprietors who have shares. It also agrees with that more ancient rental in

* Vide Account of this Court-book, Appendix.

specifying the smaller denominations which amount to a penny-land,—and all this is of great practical utility, as the inferior denominations vary in different towns and parishes from those of others.

It is proper, also, to advert to the evidence of its authenticity, arising from the coincidence betwixt the rental 1595, and the charters about and prior to its date, which it refers to, with all of which it agrees exactly, in as far as my observation extends.

One of the most important effects resulting from the grants to the Stewarts earls of Orkney, were the innovations which they introduced into the holdings of the udal men. It has been said that the insurrection in the reign of James V. was occasioned by the first feudal grant that was given (to the Earl of Murray) after the connection of the islands to Scotland, although of this I have seen no clear evidence. And if resistance to the invasion of their just and acknowledged rights was the object of their struggle by the u-dallers, the battle of Summerdale had the glory of a good cause united to that of victory.

But the spirit which it is said led to that successful effort was destined to give way to the artful devices and power with which Lord Robert was invested. We have the testimony of Bishop Grahame in 1642, that when Lord Robert got his feu of Orkney and Zetland he “intendit to stress the udillands, and augment a rental on these their lands: He ceased fra it, and found out ane

vther way to doe his turne. He was Abbot of Hallyrudehouse, and Adame Bothwel, then Bishoppe of Orknay, thay made an excambion, and Erle Robert became in those dayes bischope *in omnibus*, and set his rentall *of teyndes* upon these udillands above the availe, yea triple above the availe. This rentall stands to this day.* Having thus consolidated, as it were, the whole burdens on the udallers of Orkney and Zetland, he set himself to work to feu out, according to the Scottish fashion, the lands he had acquired dominion over,—thus rivetting his own feudal right, by conecting it with those of his vassals, and perpetrating the oppressive tithing which he had artfully introduced and imposed on the whole country. He does not seem to have succeeded in getting many to take feus, at least the rental 1595, made up by Dishington, does not indicate a great number. It was natural that the native udalmen, perceiving the tendency, and feeling the effects of the increased rental in the form of teinds, would be shy and jealous of the man who aspired to be their over-lord instead of a mere farmer of scats; and, accordingly, we find all or most of the first feuars in Orkney mentioned in rental 1595 were Scotch adventurers, in the train or under the influence of the Earl.

It appears from a document, of which there are several authentic copies extant, that Lord Robert held what were denominated, “Courts of perambulation,” in which the titles of the landholders

* Rentals, No. III. p. 20.

were scrutinized, and the natural consequence followed, that the titles were found bad, and the udal lands annexed to the earldom. The document to which reference is made is a renunciation, by Lord Robert, dated at Kirkwall, 5th September 1587, of udal lands, which had thus been seized. It narrates that he had held consultation with his lordship's " friends and weil willers, and foresieing the great weil and commoditie that hereafter may insew to his Lordship and posterity, be the disponsing, renouncing, and overgiving again, to the gentlemen udallers and inhabitants of the country of Orknay, all such udall lands, quoy lands, and others, as was evictit frae them be his Lordship's courts of perambulation, and overgangs, holden upon the lands of the same and divers places thereof, mentioned most specially in his Lordship's court-books, he renounced the same accordingly." His object in this seems to have been, partly at least, to compel the inhabitants to become feudal vassals, instead of holding by their ancient udal tenure; for the renunciation proceeds on a condition, that the lands were to be restored to the udallers, " for true, thankfull, and dutyfull service, to be done by them and ilk ane of them, their friends, kyn, and allies, in time to come, to his Lordship his heirs and successors." With this explanation he renounced and transferred to " them, and ilk ane of them respective, in general, and be their names in special, as they are mentioned in the said books of perambulation," " all and hail his udall lands, quoylands, and other heretages

whatsoever, evicted and become in his Lordship's hands be way and manner of perambulation, and overgangs, holden thereupon in manner above rehearsit; renouncing and overgiving fra his Lordship and all his heirs, to the said udallers and their heirs whatsoever, all right and title of right which he or they may claim thereintill any way hereafter, be virtue of any doome or decret of the kind already mentioned, to be enjoyed by them and their heirs as freely as they did before the giving and pronouncing the foresaid dooms, for ever;"—the processes of perambulation being declared of none effect, and the same ordered to be erased from the books of the court. Commissioners were named (among others Mr John Dishington) to go through the whole country, and to take cognition "whether the Kings or bishops land is in any ways hurt by the udal men, there beside, and as bes found be them the King's and bishop's land being made as good of ilk penny land in yearly rent, and other commodities, as the udal land in all places; they to set down march-stanes thereafter to stand for ever." The condition of dutiful service to his Lordship is repeated, and the commissioners are required to give his Lordship redress for the "grippings" of his lands.

The foregoing document is a satisfactory proof of the fact, that Lord Robert Stewart did actually subvert. under his grants, the udal rights of the inhabitants, and afterwards restored them, coupled indeed with a condition of feudal vassalage, which he could not legally impose under the

public law of Scotland, as well as by his own grants, which at the time warranted fully (by the act 1567) the rights of the udalmen. A specimen may also be given of the new mode of holdings introduced by his Lordship.

By a charter dated the 3d of May 1587, (which is now in the possession of Mr Baikie of Tankerness,) Lord Robert, "Respecting the laudabill lawis and constitutiones maid anent the setting of fewis, for beiting of houses and bigging thairof, planting of yeards for polishing and decoration of the countrie and common weil thairof, and for profite to us and our airis, *in augmentation of rentale*, and for summes of money payit and delyvered to us at the making hereof be Magnus Cursetter, in that ilk, in name of feugersum; and in respect that the said Magnus Cursetter and his predecessores is and hes bein in peaceable possessioun of the lands underwritten past memorie of man, and we naywayes willing to put him thairfra, but rather to *confirme his right and keep him in possession thereof*;" therefore he disponed, "in perpetual feu and heritage for ever," to Magnus and his wife, &c. "the four merk land *udall*, being ane penny land called Wasdeale; ane uther four merk land *udall*, being ane penny land called Setter; three merk land *udall* in Bingascart," &c. with the meadows of Rossmyre, and teind sheaves, &c. to be holden for payment to the Earl and his heirs, "for the four merk land *udall*, being one penny land,

called Wasdeale ; in *scat*, aught merk butter, twelff penneyes silver, four settings malt ; in teind four settings malt, twa settings meal ;—for the four merk land, *udall*, being ane penny land, called Seatter, in *scat* aught merk butter, twelff penneyes silver, four settings malt ; in teind fyve settings aught merk malt, fyve settings seven merks meal ;—for the three merk land, *udall*, lyand in the towne of Bingascart, in *scat* sex merk butter, nyne penneyes silver, thrie settingis malt, in teind three settings aughtein merk malt, ane setting twentie ane merk meil ;—and for the thrie penny land of kings land, called Cursetter, in *scat*, land mealles and teind, ane barrel butter merchandabill ware, four meills four settings malt, twa meiles twa settings meil, fyve hundreth oysters, six poultrie, halk dog :—and for all and hail the medowes of Rossmyre, ane leispund, aught merk butter ; together with two shillings, *in augmentation of rental more than ever the saidis lands payed of befor* : To be payit at portis, termis usit and wont, and to give sute and presence at our head courtis, and due service, as use is ; and farther, to pay the sum of fourtie shillings Scotis money, the first year of the entrie of the righteous airs, when it sall happen, as use is, in name of duplication of the said feu-ferme ; and that for all other burden or dewtie alenarlie.” This charter contains a precept of sasine.

This document furnishes an example of the earlier feu-charters in Orkney, and supplies a part of the materials for solving the problem

whether or not such a *form* of investiture extinguishes entirely the udal characteristics of the holding and converts it into a purely feudal tenure? or if it merely superadds to the previous udal right, in consideration of the “grassum” and “augmentation” of the former rental, a feudal *confirmation* of the ancient title—the scats and ancient duties remaining, the correspondent marks of the udal rights being preserved; while the augmentation, the suit and presence, and the composition for the entry of heirs, constitute the feudal attributes of this anomalous holding? It would be presumptuous to hazard any decisive assertion on this matter; but it is worthy of remark, that this charter, like many of a subsequent date, acknowledges distinctly the existence of the prior udal title, and declares that the form of recognizing that right by a feudal charter is not meant to injure, but, on the contrary, to confirm that right; and it is equally worthy of remark, that the lands are described as udal lands, and that the udal scats, with land-mails and teinds, being the characteristic burdens of the udal lands, are all continued in precise conformity with the previous rentals. It seems therefore to be rather an unwarranted doctrine which is maintained by some of our law writers, that whenever the udal right is subjected to the feudal forms, the former is extinguished, and becomes to all intents and purposes a feudal holding. It would seem to be a more legitimate position if qualified with some limitation, bearing reference to the terms of the

deed by which the change is supposed to be effected ; for if that deed declare in express terms that the udal right is not feudalized but confirmed, it seems absurd, in the very face of such a declaration, to assume the reverse. It is not intended to discuss this question in the present stage of our narrative ; but it is proper to observe the earlier attempts which were made to incumber the udal holdings with feudal burdens, and to bear in mind the times and circumstances in which these encroachments were cunningly made, under plausible pretences, on the simple and unburdened tenure of the native landholders in Orkney and Zetland. For this purpose we shall now attend to the proceedings which were calculated for this purpose.

On the 22d of March 1611, while Patrick earl of Orkney was a prisoner in the castle of Edinburgh on account of the crimes and offences laid to his charge, “ for the whilks there is plea of forfeiture *depending* agains him,” a variety of acts were passed in the Privy Council : 1st, An act discharging the Earl of Orkney, his deputes and clerks, from exercising jurisdiction within the bounds ; 2dly, An act discharging foreign laws within Orkney and Zetland—in other words, annulling the established law of the district ; 3dly, An act appointing Bishop Law commissary ; and, 4thly, A proclamation and commission authorizing him to enquire into the grounds of complaint against the Earl, whether these had proceeded upon “ just cause and occasion, or upon

the distemperit humour and disposition of people," and charging all the lieges to reverence and obey the said commissioner. This seems now-a-days to have been a strange order of proceeding,—to supersede and cancel the chartered rights and authority of the Earl, who was under trial only, for various imputed offences,—to abrogate, by an arbitrary decree of the Privy Council, the peculiar laws and institutions of Orkney and Zetland, which had been expressly and clearly recognized by an act of Parliament,—involving therein the destruction of all public and private rights; and to institute inquiries as to the grounds of complaint against the Earl after the plea of forfeiture founded on them was in dependence; thus inverting all the rules of civilized jurisprudence, and violating every principle of justice.

It is of importance to attend to the fact, that the only warrant which can be discovered for repealing the ancient laws of Orkney and Zetland, was the act of Privy Council 6th December 1611; an act, it will now be generally admitted, of no authority whatever, whether it be regarded in a legal or moral point of view. No monarch ever maintained higher doctrines as to royal prerogative than James VI.; but even during his reign of despotism and buffoonery, it would not have been maintained openly that the Privy Council of Scotland could abrogate, by an arbitrary and latent fiat, the whole statute law and chartered rights of the realm. It is impossible that the proceedings now alluded to can be vin-

licated upon any other principle than an assumption that such a power did lawfully reside in the Privy Council; and, being humbly of opinion that it did not, I beg leave to suggest, for the consideration of those who may take an interest in the subject, some very different propositions:—that the act now referred to was null and nugatory from the first,—that the ancient laws, usages, and rights of Orkney and Zetland, as contradistinguished from the municipal law of Scotland, are not in any degree impaired by that act of Privy Council, but that the peculiar tenures and privileges of the inhabitants are preserved entire to them, except in so far as since altered by express Parliamentary statute, or modified by inveterate usage and the acquiescence of individuals in the innovations which were introduced partially by the ministers and minions of James, and afterwards acceded to by a portion only of the inhabitants.

I allude more particularly to the *udal* rights of the landholders; and when I affirm that those rights are still in full force, I do so rather for the purpose of exciting attention to a matter of much practical importance to the district than from any inclination to dogmatize on a subject which, in my apprehension, has not yet been properly investigated, and with regard to which my views may be found to be erroneous.

The protracted and oppressive proceedings against the Earl Patrick will be found at full length in the appendix. Law, as commissioner for the

King, in the meantime, proceeded to exercise a variety of functions in Orkney and Zetland. The record of his procedure commences 11th July 1612, and in his character of King's commissioner, sheriff, and justice within the bounds of Orkney and Zetland, his first act of authority was to elect, nominate, and swear four persons, from a leet given in to him by the inhabitants of Kirkwall, as "baillies to govern and bear rewl within the said town." He also named, chose, and swore several other individuals as "counsellors and assistors for voiting, geving ane a-fald counsell, and concurring with the said magistrattis," and passed several acts against immoralities. He then went to Zetland, where, at the house of Soundburgh, on 10th August the same year, he exercised judicial authority; and, on the 18th of that month, he held a court at the castle of Scalloway, where, after appointing officers of court, a variety of legislative acts relative to the police of the district were passed by him, "with consent of the gentillmen and commons." These were ordered to be promulgated by the bailies of every parish; and, notwithstanding the act of Privy Council prohibiting the ancient consuetudinary laws, it does not appear that any substantial change was introduced into the machinery of government, as the Bishop, with his gentlemen and commons, seem to have continued the very forms and principles of procedure which were practised under the Earl's authority.

On the 23d day of October 1812, an act of

Parliament was passed, which laid the foundation of changes in Orkney of considerable importance,—changes, however, which still remain to be carried into full effect. The act states, that the King and Council “ fand it expedient, for perfect satling of the suretie, peace, and obedience of the isles and boundis of Orknay and Zetland, and inhabitants thairof, and for removing of such disorders as heirtofore have arisen, when the cuntrie being devidit in landis haldin of the King and landis haldin of the kirk, the tenentis and possessouris of the saidis severall landis leaving to their particular superiouris, or to his Majestie’s officiaris, or sutche as had rycht or commandiment from the Prince for the tyme, upon the ane part, and to Bischopis on the uther, have fallin in sutche opposition and stryff as hes procedit to slaughters, murthers, factiounes, seditiones, and sutche heicht of confusion as the lyves of the Bischopes hes many tymes bene in danger, and the people liklie to have drawin strangers into the cuntrie, who, under pretext of assisting thair friendis, mycht, upon occasion, preasit to have possest thameselffis of the whaill cuntrie: That, for preventing the lyke danger in tyme cuming, his Majestie suld unite the reall rycht of all the saides iles,”* &c.

In order to remedy these evils, this act of Parliament annexed the whole of Orkney and Zetland to the crown, as a preliminary step for adjusting the interests of parties; and a commission

* Vide Acts, Vol. IV. p. 481, 482.

was appointed, consisting of certain dignified churchmen and state officers, to devise a plan for separating the earldom from the bishopric estates and rights. The plan adopted was to concentrate the church estate in one district of Orkney, instead of having it scattered over every quarter of Orkney and Zetland, and intermixed with the earldom property. For enabling the commissioners to estimate the relative value of each estate, and to settle the equivalents, Bishop Law, on the 12th November 1612, lodged in Exchequer the rental of both estates, which had been made up, as already mentioned, by Dishington, the sheriff, in 1595, at the time that Earl Patrick held possession of both the estates. The commissioners having completed their calculations and arrangements, finished their task in 1614. A contract was then entered into, under the authority of this act, whereby the Bishop, with consent of his chapter, resigned into the hands of the King the whole of their ecclesiastical estate and rights, for the purpose of getting a new grant which should embrace a rectified arrangement of the church property and privileges, and define distinctly and permanently the respective interests of the Earl or King, and of the Bishops. On the other hand, the King granted and disposed a variety of lands, rents, revenues, and jurisdictions to James Law, the bishop, and the chapter of his cathedral, and of new created and endowed the bishopric, which, as then modelled, embraced all the earldom lands and rights si-

tuated within its territory, given in exchange for the church lands which were situated in the other parts of Orkney and Zetland.

In order to complete in technical form the arrangement thus effected, a crown charter was issued in favour of the Bishop and his chapter on the 4th of October 1614.* It was accompanied by a precept of sasine, and followed with an infeftment on the 14th November the same year.† Thus a complete and palpable separation was made betwixt the earldom and bishopric; and so entire was this disjunction, that there was not a single field or furrow of land belonging to those estates left intermixed with or closely adjacent to each other. Indeed, with one trivial exception in the neighbourhood of Kirkwall, the two estates were wholly situate in distinct parishes.

As this excambion in the year 1614 established permanently a number of rights and interests, and imposed certain burdens by which the whole district is affected to the present time, it may be proper to give an abstract from the record of the various particulars embraced in the arrangement. It is obvious, from what has been already stated, that the act of Parliament 1612 (however unjust it might be with respect to Earl Patrick) and the contract following upon it, vested in the King the whole rights previously enjoyed both by

* Vide Printed Rentals, App. p. 31.

† See Record of Bishops Courts, 8th June 1665.

the earls and bishops ; and that the charter to the Bishop in 1614 must be held as the evidence of what was given to the church, and reserved by consequence to the crown—the rights of the udallers and feuars on both estates remaining of course unaltered, except to the effect of changing in some instances the scat-receiver to whom they were to pay their duties, and of whom they were to be tenants for the future.

By the bishopric charter 1614, the King, with consent of his officers of state, and under the authority of the act 1612, gave, disposed, and for ever confirmed and mortified to James, bishop of Orkney, and his successors, the whole lands in the parishes of Holm, Orphir, Stromness, Sandwick, Shappinshaw, Walls, Hoy, and also certain lands in the parish of St Olla therein enumerated, all situate in Orkney. This grant, of course, could not be, and was not to the prejudice of the feuars or udallers who had established rights within those parishes ; but the whole lands, whether of old called king's lands, bishop's lands, udal lands, or kirk lands, were conveyed either in property or superiority (modified in as far as udallers were concerned) to the Bishop, together with the “ Holmes, skerries, (little islands and rocks,) “ wrak, waith, wair,” and all parts and pertinents belonging to the lands, with commonities used and wont. The teinds, parsonage and vicarage, and other ecclesiastical dues arising from those lands and possessions, which belonged of old to the bishopric or to any other dignity, to the com-

mon church or other benefices, were dissolved from the Crown, to the effect that the same might remain with the Bishop to all future time as a part of the property and patrimony of the see; with a proviso that the prelates should plant churches within the bishopric parishes, and provide to the ministers serving the cure therein sufficient stipends. The "Place of the Yardis" was also given as an Episcopal palace, in which, however, the King's lieutenant was to be lodged when he had occasion to go to Orkney. Certain lands in Evie, Burray, Flottay, and Caithness, (which had been previously feued also,) were conveyed; and the Bishop and his successors were constituted patrons of all the vicarages within the isles, lands, and bounds of Orkney and Zetland; the right of advocacy, donation, and patronage of the whole churches was conferred on the prelates, with power of appointing qualified ministers to serve actually at all and each of the churches as often as vacancies should occur by the death, demission, or deprivation of the incumbents; with this farther declaration, that this right of patronage should nowise infer any prejudice to the bishops touching their enjoyment of the vicarage teinds and others particularly of new mortified to them. A right and jurisdiction of sheriff and bailie was vested in the bishops within the bishopric territory, with the authority of commissary over Orkney and Zetland; and, power being given to appoint sheriffs and bailies, the inhabitants of the bishopric were

exempted from the jurisdiction of the earldom functionaries: and all rights of patronage (if there were any) within the bounds of the said bishopric were annulled, to the effect that they and all the lands, rights, and jurisdictions might remain with the bishops as their patrimony and privilege for ever. These are the main and substantial provisions in the Episcopal charter, and the rights thus conveyed to the prelates were effectually separated and dissolved from the Crown. That charter is therefore now the standard by which all future grants of the earldom estate fall to be tried; and in as far as they are inconsistent with it and the possession which followed upon it, in so far such grants may fairly be held null and ineffectual.

Contemporary with the arrangement which has been now detailed, an assurance was given by the Scottish government to the tortured inhabitants of those islands, that they were to be freed in future from the vexations to which they had been subjected. They were lulled with a promise that there should be no return to the former state of misrule, trouble, and oppression; and an order was issued by the King and Council to the proper officers "to pass to the market cross of Kirkwall, and other places needful, within the bounds of Orkney and Shetland, and there, by open proclamation, to give signification to all his Majesty's lieges and subjects, that the lands and earldom of Orkney and Zetland were annexed to the Crown, to remain perpetually and inseparably

therewith in all time coming.”* This promise was fair, but it was delusive ; and the inhabitants of Orkney have since suffered a sort of slavery during a period of two centuries, in which successive generations have had ample cause to moralize in bitterness of spirit, on the good faith, the honour, and the justice of their lords and rulers.

It was not, however, by the word of a King and the assurance of his Privy Council alone, that the rights and laws of Orkney and Zetland were guaranteed to the native inhabitants on the extinction of the tyranny of the Earls. In addition to these, the act of annexation 1612, was a solemn national pledge by the Three Estates in Parliament. That statute declared, in terms the most unequivocal, that the earldom of Orkney and lordship of Zetland were united, annexed, and incorporated to the Crown of the kingdom of Scotland, “ therewith to remain perpetually and inseparably in all time coming,” and any future grant thereof was declared to be in its very essence ineffectual, and revocable at pleasure. It may be said, indeed, that the same supreme authority which thus annexed might again legally disjoin this territory, and, by a dispensing power inherent in its mortal omnipotence, declare an alienation to be lawful which it had previously decreed to be illegal. This position it is not necessary to controvert, although the doctrine is generally qualified with a proviso that private and vested rights in third parties are not to be

* Privy Council Register, October 29, 1612.

rashly overthrown by the exercise of this supreme power ; and no one acquainted with the case will maintain that the subsequent grants of this annexed heritage of the Crown, in violation of the royal and national honour, did not affect most injuriously the condition and rights of the inhabitants of the district ; nor will any man be so absurd as contend that it is good government, viewed either with reference to morals or sound policy, that the plighted faith of a sovereign or of a state should be broken again and again, upon false and frivolous pretences, to gratify the cupidity perhaps of a single unworthy individual, and to sacrifice thereby the rights and the happiness of thousands and tens of thousands of loyal and good men. It is not for the purpose of starting any doubt as to the mere legal validity of the long series of such deeds with reference to Orkney and Zetland that this matter is here alluded to, but in the humble hope, that, in as far as now possible, the Government of this day may yet redeem the solemn pledges of former kings and former governments in Scotland, to the injured and insulted inhabitants of this remote region. It is not in its power to remedy all of evil that is past in the management of this province ; but it is most earnestly to be wished that it may not prolong indefinitely, in violation of oft-reiterated promises to the contrary, a system of unquestionable mischief, but will do all that is still in its power to redress the wrongs and to repair the injuries of former and less happy times.

Edinburgh, July, 1822.

Since these sheets were put to the press, various questions have arisen in the courts of law, which involve the discussion of many points essentially connected with the land rights of Orkney and Zetland. Several applications also to the treasury for grants or leases of the ancient bishopric, now the King's estate in Orkney, have been made, and are now under consideration. I am unwilling to trench in the slightest degree on the range of any discussions which are *sub judice*, or to publish any thing which could be construed into partiality towards any of the parties interested. I am more anxious to collect and preserve, for the future guidance of the inhabitants, the scattered lights which may be thrown on these obscure subjects by the agitation of the various topics of debate, than to state my own unimportant views with respect to any of them. I have therefore deemed it proper to pause for a time, and to reserve for another small volume the materials which I had prepared for illustrating the condition of the islands *subsequently* to the arrangements made in the year 1614. I shall thus, I trust, be enabled to correct any errors into which I may have fallen, and to record the decision of several questions which must affect deeply and permanently the rural and political economy of the islands. I flatter myself, too, that I may ere long have the pleasing task (although in this my hopes may be disappointed,) of communicat-

ing to the inhabitants the particulars of new arrangements conducive to their prosperity and happiness; and it is the chief object which I have in view by printing these pages, to give publicity to facts and transactions, the full and general knowledge of which will, I trust, prevent for ever the recurrence of abuses by which these islands have too long been cursed and oppressed.

There are only two of the subjects, relating to periods after the year 1614, which I shall introduce into the present volume,—namely, a chapter on the political state of the islands, and some original correspondence with regard to Gow the pirate. The former is a subject in which I know the gentlemen of both clusters of our islands are interested, and it is desirable that the gleanings I have made on the subject should be speedily laid before them. The latter relates to a matter of passing interest, and need not be postponed. I intended to have inserted the journal of Fea who took Gow prisoner, and the various depositions and memorials on the subject,—but, learning that Mr J. F. Denovan is preparing a separate life of the pirate, I have communicated these to him, and shall content myself with inserting only the correspondence which passed during the progress of the treacherous seizure of that adventurer.

PART III.

POLITICAL STATE

OF

Orkney AND Zetland.

PART III

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OF

Orkney and Shetland.

POLITICAL STATE
OF
Orkney AND Zetland.

AMONG the numerous anomalies and puzzles in the condition of Orkney and Zetland, the political state of the islands is one of the most singular. The whole of Zetland, comprising about one half of the population* of the stewartry, and including among its inhabitants a portion of wealth, talent, and public spirit equal perhaps to what can be found in Orkney, is absolutely shut out beyond the pale of the constitution; and the only visible marks of the inhabitants being British subjects, are, that they contribute their share of taxes to the public service, and furnish, in seasons of war and alarm, a powerful band of mariners to fight the battles of their country, and to uphold the honour of the British flag. The causes of this irregularity—of this injustice I will call it—are worthy of particular notice in a work of this kind, especially as hitherto these have not been fully explored by any of the writers on Orkney or Zetland; and it is but an act of common justice to give the inhabitants of Zetland such information on the subject as appears to have been intentionally suppressed for the purpose of disguising the truth. Even the inhabitants of Orkney cannot fare the worse for examining impartially the following documents and remarks.

* The population of Zetland, by the last census, is nearly 25,000.

SECT. I.

VALUATION 1653—1671.

THE *valuation*, which, alternatively with the 40 shillings of *old extent*, affords a freehold qualification in Scotland, originated during the usurpation of Cromwell in the troubled reign of Charles I. The valuation of Scotland was appointed for the purpose of levying the cess or land tax in proportion to the worth of each estate; and although a valuation to the extent of L.400 Scots was afterwards adopted as the criterion,—as one criterion at least,—of a landholder's title to the elective franchise,* the primary, and indeed the real purpose of it, was to regulate the amount of each proprietor's contribution towards payment of the cess. Accordingly, that valuation is still the rule for levying the land-tax in Scotland, and also for distributing a great variety of payments among estates in land, such as

* By act of Parliament 1681, it is enacted that those who stood, “publicly infest and possessed of a 40s. land of old extent, holden of the King or Prince, distinct from the feu-duties in feu-lands,—or, where the extent did not appear, stood infest in lands liable in public burdens for His Majesty's supplies for L.400 of valued rent, whether kirk lands now holden of the King, or other lands holding feu, ward, or blench of His Majesty as King or Prince of Scotland,” are qualified to vote for, or be chosen a Commissioner from a county to serve in Parliament.

By 16. Geo. II. “Lands holden of the King or Prince, *liable in public burdens* for L.400 Scots of valued rent, shall in all cases be a sufficient qualification.”

Fishings, teinds, and milns, are taken *in computo*;—lands and estate are synonymous,—Wight, p. 202, 203.

See case, January 17. 1755, Campbell v. Campbell, (*feu-duties*,) Wight, p. 205.

the expense of building churches, manses, and schools, school-master's salaries, &c.

“ By two acts of the Usurper's Parliament holden at Westminster, 1656, c. 14. and 25. (says Mr Erskine*) imposing taxations upon Scotland, the rates laid upon the several shires are precisely fixed, and the equal assessment of those rates among the individual landholders in every shire is left to the adjustment of Commissioners.” An additional land tax having been imposed *anno* 1667,† by an act of convention of that year, it “ proceeds to specify the proportions on each shire and borough, which are nearly the same as those that had been fixed at Westminster in 1656, and the Commissioners appointed for levying this last tax, imposed in 1667, were by the act directed, in so far as concerned the proportioning of the total sums to which every shire was subjected upon the individual landholders of that shire, to proceed according to the former valuations of their respective lands where they appeared equal and just; and where the Commissioners were of opinion that the lands of any particular landholder were over-rated, to rectify their valuations according to equity, but without altering the total sums charged by the act upon every shire.”

The act thus referred to, (23d January 1667,) confers the powers of correcting erroneous valuations, in the following terms: “ All persons who conceive themselves grieved by former valuations, are hereby appointed and warranted to make application to the commissioners of the respective shires and burghs where their estates lie, *betwixt and the 10th day of April next*—and the saids commissioners or quorum thereof, (which is hereby declared to be the major part,) are ordained to proceed and determine thereupon, *and to perfect and close their valuations betwixt and the first day of June next*: And their first meeting to be the second Wednesday of March, at the head burgh of the shire; and thereafter to adjourn their meetings to such diet and places as they shall

* Institutes, B. II. Tit. 5. §. 35.

† Ibid.

“think fit.” The Commissioners appointed *for Orkney* and “Zetland, by this act, are,” *for Orkney*, Andrew, Bishop of Orkney, Patrick Blair of Little-Blair, Archibald Stewart of Burray, Patrick Graham of Rothisholm, William Douglas of Egilshaw, James Baiky of Tankerness, Arthur Buchanan of Sound, Commissar Buchanan of Sandset,--Young of Castleyards, Elphingston of Lopness, G. Balfour of Pharay, David Craigie of Oversandy—and *for Zetland*, Colonel William Sinclair, John Sinclair of Quendal, James Sinclair of Scalloway, Andrew Bruce of Minnes, Captain Middletown, William Bruce of Sundburgh, Magnus Mowat of Oldberrie.

From these authorities it appears that the valuation of Scotland was permanently made up under the sanction of the acts 1656 and 1667. The latter, indeed, refers to an act 1660 as its basis, but that act has not been seen; so that it is the valuations made up in 1656, and rectified and approved in 1667, that are to be regarded as the legitimate records of the valued rents of Scotland. Keeping this doctrine in view, the proceedings of the Commissioners of Supply in Orkney and Zetland shall now be detailed.

A valuation of the Free Rent of Orkney was made up on 18th October 1653. I cannot discover under what precise authority this was done, as no reference is made to the statutory warrant; but it is probable that it was done to meet some of the temporary exactions of those troubled times. If Mr Erskine be correct in stating that the acts of the year 1656 were the statutes by which the rates laid on the several shires in Scotland were fixed, it is doubtful whether the valuation of Orkney in 1653 was warranted---being prior to 1656. And indeed, independently of that circumstance, and the valuation itself being now lost, it is very questionable whether it was not altogether and essentially defective and incorrect. From the copies of it which are still extant, (and there is one in Mr Stewart's office at Exchequer, certified to be a correct transcript of the original, and signed by two commissioners and the clerk in the year 1751,*) it appears to have been concocted

* “We Donald Groat of Newhall, and Andrew Young of Castleyards, Esqrs. “two of the Commissioners of cess and supply for the county of Orkney, and

in the most superficial and unsatisfactory manner. It rarely happens that the lands are mentioned; but in each parish an heritor's name is put down, and the rent of "*his lands there*" repeated perhaps twenty times in the same parish, without specifying what lands;—the rent, under various deductions, being then stated. The consequence of this is, that, in almost every case, it is impossible to discover to what parcel of land the valued rent put down applies:—and by the splitting of some estates, and the accumulation of others, the valuation of many parcels of land cannot be at all discovered. Such as it was, however, the result of it was this: The total valuation of Orkney was brought out to

	L.56,551	9	1 $\frac{2}{3}$
Which was thus divided			
The Earl's rent is	L.19,291	17	6 $\frac{1}{3}$
The Bishop's rent is	6,796	16	4 $\frac{2}{3}$
The Heritors rent is	30,462	15	2 $\frac{2}{3}$
Summa,	L.56,551	9	1 $\frac{2}{3}$

It is not known what steps were taken by the inhabitants of Zetland to equalize among them the payment of the different levies which were made upon them; but as there were frequent quarterings for the oppressive and reiterated exactions which were made, it is probable that no measures were adopted by the landholders of Zetland for getting a regular valuation. Indeed, it seems to be generally admitted, that no valuation ever took place in Zetland. And the presumption is, that the total amount of their contributions being settled betwixt them and their neighbours in Orkney, they subdivided it as they have since done, by a sort of amicable rule, according to the merk-

"John Urquhart clerk to the saids commissioners, do hereby certify and declare that the seventy-eight preceding pages contain a just and trew copy of the Valuation-Book of Orkney, conform to the said Valuation-Book, out of which this is extracted. In testimony whereof, we have subscribed thir presents upon this and each of the preceding pages, at Kirkwall, the 20th day of September 1751 years. (Signed) Donald Groat, Andrew Young. John Urquhart clerk."

lands of the district.* It must have been settled about the period now referred to, that Orkney was to pay two-thirds, and Zetland one-third of all taxes imposed on the county;—for I find in an authentic register of the proceedings of the heritors of Orkney, soon after the Restoration, the following statement in letters from the commissioners of Excise of Orkney to those in Zetland, and “To Sir Alexander Durham, Lord Lyon King at arms, and Sir John Weyms of Bogy, or either of them,”—viz. That “as to Zetland, though it be a *part of the shyre*, yet at such a distance from us, that we have but litle intercourse:—this general rule, we have ever kept, with consent of both countreyes;—wee of Orknay have allwayes paid two parts of all impositions, and they of Zetland the third.” (22d November, 1661. Register, folios 9 and 10.) It is of some consequence to attend to the further procedure, as recorded in the Register, with regard to the valuation.

Patrick Blair the Sheriff-depute, having been chosen (15th April 1663, *Register*, f. 29.) “Commissioner for the *shyre* to the next ensuing Session of Parliament,” instructions to him in that character were drawn up by his constituents on 24th April thereafter; and amongst a number of particulars which he was directed to attend to with respect to the various levies by the usurpers, the Marquis of Montrose and others, there is the following article: “3dly, If the countrey of Zetland desyres to be seperat from us, and erected in a shyre be them-

* A similar plan seems to have been followed in Orkney in the time of James VI.

† (24th January, 1623.) “The quhilk day the shireff, gentlemen, and bailies of the Earldome being present for the tyme; Eftir ane exact enumeration of ye penny lands within the said Erledome of Orkney, and collection of five shillings for ilk penny land of the same, Fand, yat ye fyve shillingis upliftit wold not amount (to) ye sume dew to be payit to His Majestie conforme to ye act of Parliament; and yairfoir all, in ane voice, consentit and aggreit that sex shillingis sauld be upliftit off ilk penny land for this terme last by past, for supplie and satisfaction of the first and second termes payment, and be inbrought and deliverit to Walter Ritchie quhill the next terme that ane mair strict stent be maid.”—See Record of Sheriff Court, Vol. I. folio 156.

“ selves, you are to consult with My Lord Morton therin,—
 “ that in caise any publict impositions be laid on be His Majestie
 “ in Parliament, you are to be carefull to sie it equally propor-
 “ tionated betwixt the two countreyes, as it wes formerly, when
 “ the Bishoprick of Orknay wes lyable for Sess also ; and that
 “ the inhabitants of this countrey be not troubled be Zetland’s
 “ proportion, nor they with ours ; *and if need beis to crave a*
 “ *commission of valuation for both countreyes* seing the bishoprick
 “ is now to be exempted, so that the shyre beare not burden
 “ for it.”

In the same Register there is a letter (24th July 1663) engrossed, F. 34. from the county gentlemen, dated at Birsay castle, where the Earl of Morton’s chamberlain, Douglas of Spynie, then resided. It is addressed “ For the much honored Patrick Blair of Little-Blair, sheriff of Orknay and Zetland *and commissioner to the Parliament for both countreyes* ;” it is signed by some of the leading persons in Orkney, “ in name of the rest of the gentlemen and heritors of the countrey of Orknay ;” and it describes them to be at the time “ in such a quandary* that we
 “ know not what to advyse you to prosecute for extricating us
 “ out of this difficulty,” viz. payment of old levies which were assigned to the Earl of Middleton, and which of course affected all parts of the shire.

In a letter from Blair to them, (dated 27th July 1663, received 18th August thereafter, and entered in the Register, F. 39.) he writes “ Your other grievances *and Zetlands* I have by
 “ supplication presented to his Grace (Middleton, commissioner) and the Parliament.” In another letter from him, he says, “ I have supplicate against all farther cess ; what speed
 “ I come you shall hear of from me.” And in another he informs them, that the “ town of Edinburgh (for the Bishopric
 “ estate) is now charged by Bogey for all the old maintenance
 “ in arrear ; and Sir Gideon Murray, who is exceedingly busy
 “ in the matter, intends to cast all over on *the shire*, for he al-
 “ leges they were never valued and never paid.”

In a petition to his Majesty’s Commissioners and the Parliament, by the “ inhabitants of the shyre of *Orknay and Zetland*,
 “ (*Reg. p. 44.*) being above sixty islands dispersed by the space

* “ At the back of God’s elbow.”—p. 41.

“ of 260 miles in the wide ocean,”—it is craved “ that hence-
 “ furth, in all taxations and legall impositions, Orknay be
 “ not troubled with Zetland’s proportion, nor Zetland with
 “ Orknay’s ; ther being about 150 milles of a turbulent sea
 “ betwixt them, *Orknay being a two part and Zetland a thrird*
 “ *part of the Shyre* ; and if need be to grant a commission for
 “ a NEW VALUATION, *Zetland having never yet been valued.*”
 There is a statement of payments made for the usurpers, first
 from Orkney and secondly from Zetland ; and, connected with
 the cess and excise, there is a detail of “ the grievances of
 “ the inhabitants of Orkney and Zetland, to the commissioner
 “ his Grace and the Honourable Court of Parliament.” As
 an inference from some facts,* is suggested “ that henceforth,
 “ in all public impositions, the shire may have a proportional
 “ ease for the bishopric, which is henceforth to be free of all
 “ taxes. It is also stated, that “ in respect *Zetland, which is*
 “ *a third of the shire*, is much impoverished by those exactions,”
 an ease of the excise should be given.†

There is an article of the report (*Reg. p. 49.*) made to the
 Lord Commissioner and the Lords of Articles, by the Earl of
 Annandale and Laird of Polmaise, “ anent the Petition of the
 “ shyre of Orkney and Zetland,” 20th September 1663. It is
 of the following tenor: “ It is our opinion anent the 5th peti-
 “ tion, that, (*until there be a new valuation*) of the shyre, Orknay
 “ pay a two part and Zetland a third part of all public im-
 “ positions, the samen haveing been the maner in tyme of the
 “ usurpers, and ever since.”

There is also another article of their report to the said Com-
 missioner and Lords of Articles, (page 49) “ anent the peti-
 “ tion of Orkney and Zetland,” 28th September 1663, “ that
 “ Orkney be esteemed a two part and Zetland a third part of
 “ the shyre, and accordingly pay all public impositions as they
 “ have been in use in tymes by-past, and a proportional ease for

* Viz. “ That during the time of the usurpers, Orkney was forced to pay the
 “ cess of the bishopric of Orkney, though it was valued, and had formerly
 “ paid the proportion with the shyre,” &c.

† It appears that “ no fish or herrings have this year swimed as formerly
 “ on the coast of Zetland ;” that the “ little corns that grew there, hath been
 “ blasted ; and that their hath been an extraordinary morrain among their cat-
 “ tle and bestial thir three years past.”

“ the bishopric,” — “ anent which the reporters opinion is, that
 “ *until there be order from authority for valuing both countreyes*
 “ they be still esteemed so, and accordingly pay their propor-
 “ tions of all public dues,” &c.

“ The *shyre of Orknay and Zetland*, (fol. 46) payd monthly of
 “ maintenance for the space of 38 months, 1145*l.*—*inde*, in the
 “ whole 43,510*l.* whereof deduced for 5 months 2741*l.* 13*s.* 4*d.*
 “ sua rests to be payd, 40,768*l.* 6*s.* 8*d.* whereof the countrey of
 “ Orknay as a two part *of the shyre* has paid proportionally
 “ 27,180*l.* The county of Zetland is a third part of the *shyre*,
 “ and the Earl of Morton’s proportion is a third part of Zetland,
 “ which is 4523*l.* so rests to be counted for by the heritors of
 “ Zetland, 9047*l.*” This statement is annexed to a “ Petition
 “ of the inhabitants of the *shyre of Orknay and Zetland*” to Par-
 liament.

There is a commission inserted in the *Reg. F.* 70, (22d Nov. 1665,) by the county gentlemen at Kirkwall to David Craigie, which narrates that a commission has been emitted by the general collector of public dues, “ for collecting the sum of 3382*l.* out
 “ of the *Sheriffdom of Orknay and Zetland*, isles and bounds
 “ yrein, which should have been uplifted and collected from
 “ the 1st February 1649 to 1st December 1650,” which is stated to have been intimated at “ our head Court, holden at
 “ Kirkwall the 14th November instant, by Patrick Blair of
 “ Little-Blair, sheriff of the *Earldom of Orkney and Zetland**.”
 And there is a commission granted to Craigie to get the matter arranged “ for the said *whole shire* who are concerned.”

An act of Exchequer is inserted (*Reg. p.* 74, 2d March 1666) which narrates that the *sheriffdom of Orkney and Zetland* was resting 22 months maintenance; and that said David Craigie “ for himself, and in name of the said heritors of Orkney and Zetland,” had settled for 11 months; and therefore the Exchequer “ as-
 “ soilzie and discharge the said David, and the remanent heiri-
 “ tors of the said *Sheriffdom of Orkney and Zetland*, of the
 “ other eleven months mentioned.”

This is followed (fol. 75) by a factory and commission from

* During the prevalence of Episcopacy, it will be recollected there was a sheriff in the Earldom and another in the bishopric, holding separate commissions, and exercising jurisdictions in their respective territories.

the general collector, to Craigie, to collect the composition, in which the arrear is spoken of as due from the sheriffdom "of Orkney and Zetland," and that it is to be levied *upon the whole shire.*" And on F. 77. there is a *cast* of the 11 month's maintenance for "which the *sheriffdom of Orknay and Zetland* is "liable in payment."

Commissioners having been chosen (Dec. 20, 1666) "*from this shire* at the Convention of Estatis," instructions as usual were given to them, amongst which is the following: viz. "If you find the Bishop to be exempted from the said mentenance, you are to supplicate for a new valuation, both for Orkney (and Zetland, never being as yet valued;) *and whether the Bishop be exeemed or not, plead earnestly for a new valuation both for the Earldom and Bishoprick.*" &c.—folio 83.

Referring to the deliberations in the Convention which preceded the act 23d January 1667, for rectifying the valuations, Buchanan of Sound, one of the Orkney commissioners, writes his constituents: (17th Jan. 1667,) "It is concluded by the convention since my last, that the L.6000 Sterling per mensem shall be laid on the whole heretors, bishops, and dignified persons, conforme to the old valuation in the Protector's tyme:" "*Orkney and Zetland's proportion is L.91, 14s. 2d. Sterling per mensem.*"—F. 86.

By the act (23d Jan. 1667) for rectifying the former valuations, the 2d Wednesday of March was appointed for the Commissioners to hold their first sederunt; the 10th of April was fixed as the latest day for giving in applications for altering the old valuations; *and the Commissioners were directed to close and perfect their valuations betwixt and the 1st day of June thereafter, when of course their powers expired.* Let this be noted.

"The Commissioners" for Orkney met at Kirkwall on the 26th March 1667, under the new act, and "find that the proportion of Orknay per mensem amounts to ye sum of L.725 13s. 4d. *being the two part of the shyre;* and Zetland's *proportion per mensem, being a third part,* should pay L.362, 16s. 8d. and this according to the rule and proportion in anno 1660, which extended in whole to the sum of L.6000 Sterling per mensem. *It was desired by my Lord Bishop that there might be a new valuation of the bishopric; and sick-*

“ like, Mr Hay, commissioner from my Lord Morton, desired, in
“ my Lord’s name, a new valuation of the Earldom. The Com-
“ missioners not being a quorum, continowes the meeting to
“ the 9th of Aprile,” &c.—F. 89.

At the sederunt of 9th April 1667, applications were made for new valuations for Buchanan of Sound, Douglas of Eagelsay, (his teinds in Stromness,) Grahame of Grameshall for Stewart of Newark’s heirs, and for Craigie of Gairsays. Baikie of Tankerness also applied, and Buchanan in name of Henry Grahame of Breckness. The minute then proceeds thus:

“ The Commissioners taking to consideration that at the last
“ valuation in anno 1653 the rents of the Earldom and bishop-
“ rick have been too highly rated, *without respect of many rea-*
“ *sonable deductions that ought to have been allowed them,* as
“ wes represented by Mr Patrick Hay, representing my Lord
“ Morton, and my Lord Bishop being personally present,—
“ Have therefore enacted and ordained, that for dispatch of His
“ Ma.ties service, the former valuation of 1653 shall *for this*
“ *present year* stand as it was then castin, except only for the
“ Earldom, who is only sessed to sixteen thousand pounds
“ scots, and my Lord Bishop to the sum of four thousand six
“ hundreth sixty-six pound 13s. 4d. ; without prejudice also to
“ rest of the heritors above written, that have given in their
“ desyres for a re-valuation this day or before this day, who are
“ to have the benefit of the act.—The Commissioners order let-
“ ters to be written to the several baillieffs of the several parishes
“ and isles, to send in before the 20th of this moneth a note
“ of all the lands *fieued* by any persones within their several
“ parishes—what penny lands they have fieued since anno 1653,
“ and orders the saids fieuars to come in and bring with them,
“ before the said day, a just rentall of their free rent of their
“ lands, to be given up upon oath ; with certification, if they
“ fail to come in before the 10th of May, the Commissioners
“ will proceed to admit and receive witnesses for proving their
“ saids rents, conforme to the act of Parliament,” &c.—F. 89.

The next sederunt of the Commissioners was on 25th June 1667. They direct the collector to issue orders for the payment of cess at Lammas following; “ and let the orders bear,
“ that such as have made new purchases since anno 1653
“ shall be valued according as the Commissioners shall find

“reason, unless they send in to the collector and to three of
 “the commissioners their true valuations, subscribit under
 “their hand and upon oath, and that before the 10th of July
 “next to come.” They accepted of the new valuation given
 in by Arthur Buchanan of Sound, and give the collector or-
 ders to receive payment conform thereto.—F. 95.

The Commissioners met again on 10th July 1667, but not be-
 ing a quorum they adjourned till the day following. They desir-
 ed notice to be given to the other Commissioners, and directed
 the clerk to note on the record that only Pat. Grahame of
 Grahameshall and Pat. Blair, tutor to Pat. Monteath of
 Eaglesay’s heirs, had produced rentals upon oath, desiring a
 ratification, “seeing they were offered this day, which was the
 “prefixt day for that effect; and that none else who have ne-
 “glected to bring in their rentals this day be hereafter heard.”

Having met next day, the Commissioners fixed Grahames-
 hall’s lands in Holme to be only L.541 19s. as the rule of his
 future assessment; and Pat. Monteith’s teinds in Stromness,
 to be only 1 last 8 meils 1 settg. 23 mk. 3 pt. mark malt, 13
 meills 2 settgs. 5 mk. 2 pt. merk meal; and accordingly to be
 thereafter cessed.—F. 95.

About the time of the Restoration, and soon after, a number
 of the udallers had been induced to take feu grants of their an-
 tient inheritances from the agents of the Morton family. They
 generally paid a consideration therefor, or gave some small
 addition to the former rental of scat, &c. which was continued
 with an augmentation. But as they behoved to draw some sur-
 plus rent from their tenants, the other heritors were interested
 in getting those surplus rents instructed and added to their
 former valuation of 1653. At this meeting they instructed
 their clerk to apply to George Ritchie (a chamberlain or clerk)
 “for a list of those names who has feued lands, and what lands
 “they have feued of my Lord Morton; and appoynts any thrie
 “of the commissioners that shall meet at any tyme to value
 “the same, and as they shall value them ordains the clerk to
 “ishue out orders for the whole 12 mos. cess, to be employed
 “for the relief of those who has been overvalued and are ap-
 “poynted to have ease.”

Amongst the Instructions from a meeting of those Commis-

sioners (Sept. 22. *Reg.* fol. 118) for Patrick Blair of Little-
“ Blair, sheriff of Orkney and Zetland”, commissioner to the
ensuing Parliament, he is particularly directed “ that our
“ commissioner *plead for a new valuation of the shyre*, and to
“ get it past by way of act, and to have such persons
“ names insert yrin for the said new valuation as he finds re-
“ quisite.”

The clerk gave notice of the meeting to be held on the 11th
of Oct. 1669, by adjournment from 22d Sept. and the meeting
was accordingly held; but as the *feuars*, whom it was in con-
templation to burden with the additional cess corresponding to
their excrescent valuation, seem to have been very backward,
the meeting was again adjourned till the head-court at Hallow-
mass, and the clerk was of new appointed to write letters to
all the parishes, “ that the *feuars* and wadsetters be all here
“ present on the 11th of November ensueing, to give in their
“ consent and concurrence for their security of the *feues* and
“ wadsets in all time comeing; otherwise those who shall not
“ appeare and give their consent and concurrence, to be left
“ to their owne hazard for the future.”

The anxiety thus displayed by the Commissioners to get the
feuers and wadsetters to consent to and concur with their pro-
ceedings, seems not to have been altogether without reason;
for it will be observed that the Parliamentary authority, under
which alone they were warranted to act, *had expired* on the 1st
day of June 1667---whereas they had continued to meet and
act *for more than two years* thereafter, just as if their power had
been in the most efficient and legal condition. If all parties in-
terested could have been got to concur in the new valuations
which were contemplated, all would have been well. The
feuars and commissioners were all summoned of new, (14th
October 1669,) but the summons seems to have been disre-
garded.

The next sederunt which appears is dated 15th Feb. 1671,
in which the Commissioners again direct their clerk to write the
baillies in whose bounds any lands have been lately feued
by the Earl of Morton or Spynie, that they bring in their
true valuation upon oath to the said Commissioners upon the
29th day of March next to come; with certification that if

they neglect to give up their true valuations, the Commissioners will value them themselves, and cause them pay accordingly, both for the last 12 months and this too.

Orders to this effect were accordingly advertised, but apparently with no effect, for no procedure seems to have taken place on 29th March, the day appointed for the feuars to put in their rentals.

On 19th April 1671, however, without any preamble or explanation of the intermediate procedure, there is the following minute,—fol 132. “ Acted by the honourable Commissioners
“ of Assessments anent the valuation of the feuars for the five
“ moneth’s cess, monthly.

“ James Baiky, Tankerness, hes of free rent,
“ within the paroshin of Dierness, in the
“ town of Sandwick there, by and attour
“ the old valuation, ten meils malt is 0 11 0 $\frac{1}{2}$

“ George Smith of Rapness, for his lands in
“ Dierness, 4 m. malt is 0 4 5

“ James Baiky of Tankerness hes of free rent
“ in St Andrews, for his 6d land of Knock-
“ hall and Neerhouse, the 2d land in Whyt-
“ clet, with his lands of Widick, 12 m. malt is 0 13 3

“ William More in Quayner, for his lands in
“ Harray, 1 m. malt is 0 1 1 $\frac{1}{4}$

“ Alexander Sinclair for his lands in Netcletter
“ in Harray, 1 m. malt is 0 1 1 $\frac{1}{4}$

“ William Moncrieff, and the heirs of umquhill
“ David Moncrieff hes of frie-rent for their
“ lands in Birsay, 16 m. malt is 0 17 8

“ Nicol Moncrieff hes of frie rent in Birsay for
“ his lands of Swaney and Fea, 6 m. malt is 0 6 7 $\frac{1}{2}$

“ John Johnston of Bea for his lands in Bir-
“ say, 3 m. malt is 0 3 3 $\frac{3}{4}$

“ Robert Spence, in Ingsay in Birsay, for his
“ lands there, 1 m. 3 settings malt is 0 1 8

“ Gilbert Fulsetter, for his lands in Birsay, 2
“ m. malt is 0 2 2 $\frac{1}{2}$

“ Harry Halcro of Crooke, for his lands in
“ Rendall, 6 m. malt is 0 6 7 $\frac{1}{2}$

“ James Traill of Westove hes of frie rent in		
“ Rausay, 12 m. malt is	- -	0 13 3
“ Andrew Rendall in Gill, for his lands in		
“ Westray, 5 m. malt is	- -	0 5 6 $\frac{1}{4}$
“ Mitchell Randall of Breck, for his lands in		
“ Westray, 10 m. malt is	- -	0 11 0 $\frac{1}{2}$
“ Thomas and George Traills of Holland, for		
“ their fieud lands in Westray, by and at-		
“ tour what is contained in the book of va-		
“ luation, 12 m. malt is	- -	0 13 3
“ Nicol Rendall for his lands in Westray, 2		
“ m. malt is	- - -	0 2 2 $\frac{1}{2}$
“ Thomas Rendall for his lands in Westray, 3		
“ m. malt is	- - -	0 3 3 $\frac{3}{4}$
“ George Traill for his lands in Papaw Westray,		
“ by and attour what is contained in the		
“ book of valuation, 30 m. malt is		1 13 1 $\frac{1}{2}$
“ The heires of umquhill David Moncrieff of		
“ Holland, for his fieued lands in Sanday,		
“ 6 m. malt is	- - -	0 6 7 $\frac{1}{2}$
“ James Traill of Westore, for his feued lands		
“ in Sanday, 40 m. malt is		2 4 2
“ Robert Scolley of Odness hes for his fieued		
“ lands in Stronsay, 12 m. malt is	-	0 13 3
“ Amounting in the whole of fieued lands, to		
“ the number of 194 m. 3 settings malt—		
“ reckoned conforme to the old book of valu-		
“ ation at L.3, 6s. 8d.,—makes in money for		
“ ane moneths cess to L.10, 18s. 9 $\frac{1}{4}$ d, Scots.		
“ (Signed) HRE STEWART, J. P. C.—AND.		
“ B. of ORKNAY—PA. BLAIR---ARTHUR		
“ BUCHANAN---Mr P. GRAHAME---WIL-		
“ LIAM DOUGLAS---Jo. BUCHANAN---WIL-		
“ LIAM YOUNG.”*		

At a Sederunt on 19th April 1671, the following proceedings took place:

“ The which day it is ordered by the foresaids commissioners
 “ that there be laid on monethly, conforme to ye act L.725, 13s.

* “ Take off Stenhouse 9 meils malt and 3 m. meal, and add it to Sound's
 “ valuation for this cast 1671. (Signed) Arthur Buchanan.” Reg. F. 137.

“ 4d. and for contingencies L.100 per mensem; is in all per mensem L.825, 13s. 4d.---And becaus my Lord Bishop hes represented to us a trueth whereof wee are very sensible, viz. *that his Lordship's rents are over-reatched in the last valuation,* as also, that he has not considerable tenants to help him with polmoney; as also, John Buchanan of Sandsett, and William Douglas of Egilshaw, did represent that they were willing to take oath that they were oervalued in their respective interests in considerable quantityes of victuall; which, two, the commissioners taking to consideration, *and finding themselves not in power at this time to rectifie valuations,* yet that my Lord Bishop and the gentlemen be not altogether wrongd, they order their collector to discharge my Lord Bishop of his whole proportion, when all is payd, except 200 merks which shall be allowed to the collector at making of his accompts. The commissioners do lykeways *for this boutt* ordain the collector to abate to William Douglas of Egilshaw, of his proportion, 20 m. malt per mensem, and the lyke number of 20 m. malt per mensem to John Buchanan of Sandsett; which is all the favor can be granted at this tyme, *till they get themselves righted by a new valuation.*”

“ Item, the commissioners allows the foresaid case to my Lord Bishop upon the foresaid consideration,—but also, it was made appear that his Lordship had been at the expence of a proportion of the commissioners fee in January 1667, at the Convention of Estates, to which bylaw he is not subject.”

“ Item,—Ordains the collector to send out to the particular parishes orders for the five months cess from such feuars as took feus off my Lord Morton or Spynie, to be brought in with the rest,—a copy whereof he has now received under the commissioners hands; with this provision, notwithstanding, that any persons who find themselves wronged may address themselves to the commissioners: *any three of them hes power to rectify wrongs in that kind as they shall find reason.*”

“ Item,—Ordains any three of the commissioners to audit any complaints given in by parties where lands hes been changed from one hand to another, and all other complaints of that nature belonging to this court, and the clerk to make report next general meeting.”

The inferences to be drawn from all these facts and documents, seem to be,

1. That the valuation 1653, if it proceeded on any legislative authority, or was anywise sanctioned, was in its very essence *erroneous and defective*, not specifying the lands which were valued.

2. That from the Restoration in 1660 till 1671, this was *uniformly* the subject of complaint at every meeting of the heritors of Orkney for the purposes of the land-tax; and that they gave repeated instructions to their representatives to obtain a *new valuation*, and therefore it never was considered a correct, just, and complete valuation even of Orkney.

3. That Zetland being an undoubted part and portion of the shire, and not having been included in that valuation, that universally acknowledged fact is another proof of its defectiveness.

4. That when the act of Convention 1667 authorised the rectification of former valuations which were imperfect, *it was not rectified*---in as much as the Commissioners named by that act did not complete their proceedings until about four years after their powers had expired, when they distinctly declared that they were not then in power to rectify valuations; and accordingly they satisfied themselves with making temporary arrangements until the persons aggrieved should “get themselves *righted by a new valuation.*”

5. That the proposed corrections, deductions, and additions specified in the minute of 27th April 1671, never were legally incorporated with the former imperfect valuation-book of 1653; they form no part of the only authenticated copy of that roll which is extant, viz. the one in Exchequer.

6. With such satisfactory evidence on record that, when the statement 1671 was made up, the Commissioners *could not* embody it in the previous valuation roll, it is impossible that this unwarranted modification of the original defective book can be deemed a genuine and legitimate valuation of the *Stewartry or Shire of Orkney and Zetland.*

The general conclusion from these premises seems to be, that in the year 1751, when the pretended valuation of Orkney was lodged in Exchequer, there was no full and genuine valuation roll for the shire of Orkney and Zetland, or for any part

of it. Whether any thing has taken place by which that want has been supplied, is a matter to be afterwards enquired into.

It is proper, however, to introduce here a narrative of certain proceedings which took place in 1765 and 1766, relative to the arrangement of the valuation of the Earldom estate.

On 13th May 1765, a petition was presented to the Commissioners of Supply, by Andrew Ross, factor for the Earl of Morton, setting forth “ That the feu and superior duties payable to the said Earl out of the parishes of Dearness, Harray, Birsay, and Firth, and islands of South-Ronaldshay, Sanday, Westray, and Rousay, &c. are valued *in cumulo* with the rents payable out of the lands belonging to his Lordship in property within the said parishes and islands, as appears from the valuation book hereby referred to : That the thus valuing the property and superiority together, without distinguishing the one from the other, or so much as designing or condescending upon the lands valued, being attended with many apparent inconveniences, the said Earl is desirous, and has authorised your petitioner to apply to your honours for making the necessary separation ; for which purpose your petitioner herewith produces a particular signed rental of the duties and rents payable to his Lordship out of the above-mentioned parishes and islands, distinguishing what is property and what superiority, upon the verity of which rental your petitioner is ready to make oath, and to adduce such farther evidence as may be judged necessary.”

And the petition therefore prayed the Commissioners to consider and determine thereon according to justice. They continued the matter for some time ; and on 14th November they appointed a committee to take a proof of the rentals referred to “ betwixt and the first day of April next, to be reported to the “ general meeting of the commissioners for executing the cess “ act of the ensuing year.” The Committee did not take the proof within the time specified in the remit ; but on the 27th of May thereafter they took such proof : and on the 28th they held a sederunt, of which the record is as follows :

“ Captain James Allan of Campston, preses, Doctor Robert Groat of Newhall, James Fea of Whitehall, and Harry Graham of Hourston. The Commissioners having this day considered

the petition of Andrew Ross, and depositions of Alexander Fraser and John Heddle thereupon, together with the valuation book anno one thousand six hundred and fifty-three, by which the rents of the lands belonging in property to the said Earl, with the feu and superior duties payable to his Lordship in each parish and island, are valued *in cumulo*, without specifying the particular lands, &c. out of which the said rents and superior duties are respectively payable, and by which book the whole valuation of the premises amounts by the conversions in the said book mentioned to the sum of nineteen thousand three hundred and ninety-one pounds seventeen shillings and fourpence and one-third part of a penny Scots money, Do find, that of that sum, four thousand eight hundred and ninety-three pounds three shillings and four pennies is applicable to the rents of the Earl's property-lands, and the remaining sum of fourteen thousand four hundred and ninety-eight pounds thirteen shillings and eleven pennies falls to be applied to the feu and superior duties payable to his Lordship out of the Earldom of Orkney; and they do appoint the two rentalls before mentioned, signed by the said Andrew Ross, and marked by the preses and the said Alexander Fraser and John Heddle of yesterday's date, to be fully ingrossed in a book to be kept by the clerk."

It will be observed that the committee did not report the proof which they were appointed to take and to report to a general meeting;—but that, assuming to themselves full power and authority, they acted as a regular meeting of Commissioners. I shall close this section by quoting some old remarks upon this transaction, of which the M.S. has fallen into my hands.

"OBSERVATIONS upon the Proof adduced of the Earl of Morton's rents, before the Commissioners of Supply, and the Division of his Valued Rent made by the Commissioners May 1766.

"The Earl produces rentals of his feu duties and property rents as they are paid at present, and to prove the rentals to be true and genuine two witnesses are adduced. Fraser swears them

to be true, because he has compared them with the rental-books and has compted with the vassals and tenants for several years past. Heddle, the other witness, swears "they are true rentals, "because he transcribed them from the books." How far this is evidence that the books transcribed from are true rentals, is submitted ; but supposing the truth of the rentals to be proved, it is only evidence of the rental of the present time that is offered or required ; and from the following observations it is hoped that it will appear evidently, that the division now made in consequence of this proof is erroneous, and calculated solely to the purpose of erecting and multiplying freeholds or qualifications against law ; for no man would exaggerate his valued rent, and of course the taxes upon it, from any other motive. The minutes of the Commissioners procedure bear, "that by the original book of valuation of the stewartry of Orkney 1653, it appears that the Earl's valued rent extended to L.19391, 17s. 4 $\frac{1}{2}$ d. Scots." But these Commissioners, had any of them perused their own books and minutes, must have seen that this cumulo valuation had been formerly divided by their predecessors, and that the wadsetters and feuars posterior to the 1653 had been burdened with a considerable part of this cumulo valuation, and have been accordingly charged cess for it in the cess books of the stewartry ever since ; nevertheless the gentlemen take it for granted that this sum of L.19391, &c. is the Earl's valuation in the stewartry still. To put this matter beyond doubt, it appears by the register of excise and taxations of the stewartry 1664 or 1665, which was produced in the late process at the instance of the heritors and udalmen of Orkney against the Earl, and which will be voluntarily given up, or must be exhibited, That at the time last mentioned, upon application from the then Earl of Morton, there was L.2706 2s. 8 $\frac{3}{4}$ d. taken from the Earl's valued rent and assigned upon the lands then lately feued and wadset by the Earl, and ever since these feuars and wadsetters are charged termly with cess for their proportion of this divided valuation, and several of the freeholders now upon the roll of electors claim upon it. By this division, the Earl's valued rent for his property lands was diminished nearly one half.

"2. But, farther, the Commissioners did not attend, that

though, in ordinary divisions of cumulo valuations, the present rent is commonly resorted to as the medium of division, yet this can be a rule only in dividing the rents of lands rent from rent. If the rent of one tenement is increased, so that of the other may be supposed to be;—but though the rents of lands in general are increased double or triple since 1653, yet the feu duties remain invariably the same,—they are fixed and permanent. To distinguish, therefore, the proportion of this cumulo valuation which ought to have been assigned upon the Earl's property lands at the time of the valuation in 1653, or, which is the same thing, to ascertain how much these property lands were truly rated at when they were valued, it is absolutely necessary to instruct by authentic evidence what was the rental of these lands at the time of valuation, and that no part of them had been since sold, feued, or dismembered from the Earldom. In the present case the Earl had no party as in ordinary divisions, where each party will endeavour to tax himself no higher than he ought to be. By this the Earl aims at gaining the point of multiplying freeholders upon a valued rent which he never had, and upon which there are several freeholders existing already, and this only by transferring the valued rent of his feu-duties to his property lands.

“ 1790.—I have not found where the precise sum of L.2706, 2s. 8 $\frac{1}{4}$ d. was taken from the Earl of Morton's valuation; but I find that, on the 9th of April 1667, the Earl of Morton's valuation was reduced from L.19291, 7s. 4 $\frac{1}{2}$ d. to L.16,000, and that on the 19th of April 1671 there was a further deduction from his valuation, he having since the first valuation in 1683 to that date feued off sundry lands, whereof the valuation amounts to L.648, 10s., which lands are now held of the Crown by different proprietors, some of whom stand on the roll of freeholders on the qualification afforded by that valuation.”

SECT. II.

PROCEEDINGS in 1793, 1794, and 1795.

It appears from documents on the public record of the Stewartry of Kirkwall, that, on 16th July 1781, the landholders of Zetland drew up a memorial for the purpose of taking legal advice with regard to the manner in which they might remove their political disfranchisement, by being admitted to vote for a representative to Parliament. In that memorial it is stated, that there was “a *regular valuation* made up for Orkney in “the year 1653, which still continues the rule for levying the “land-tax; but Zetland is one of the few instances where no “valuation has been made.” And although, by an arrangement of long standing, Zetland had paid one third of the cess, yet, being destitute of a valuation, they were debarred from voting in the election of a representative to Parliament.

Whatever was the legal advice given at that time, it must have proceeded on very imperfect information with respect to the valuation-book and political history of the district, as the memorial states little more than the broad fact above mentioned, with some reasonings as to the constitutional principles which applied to their case: And, at all events, nothing seems to have been done in consequence of the consultation until after the year 1790. In 1791 a bill seems to have been sketched out for establishing and apportioning the valued rent of the islands of Zetland; but I have not been able to ascertain what was its fate.

On the 18th October 1793, a letter, signed by some of the most considerable landholders in Zetland, was addressed to the

freeholders and heritors of Orkney, intimating an intention to apply to Parliament on the subject, and that the Sheriff-substitute of Zetland had submitted to Major Balfour (one of the most accomplished and best informed gentlemen of Orkney) copies of the proposed petition to Parliament and relative bill. They stated, that they did not wish to separate themselves from Orkney, but were “anxious to go hand in hand with our brethren of Orkney. Mr Scott (the sheriff) has assured us of your readiness, from the information of the Major, to join issue on fair and equitable terms. Our situation is fully explained in the papers before-mentioned, but your peculiar situation we are not so well informed of. We understand in general that some confusion or embarrassment has crept into your valuation, which we, however, imagine rests more immediately with yourselves to obviate and get corrected. But, at same time, we are earnestly solicitous to make the intended application a common cause; and, for this end, we intreat that you would frame a general plan for yourselves and us, as you know our grounds and pretensions, but we do not know yours or your difficulties, by which general plan the defects in your valuation may be corrected and our just claims obtained.” This letter, which is written in a spirit of the greatest fairness and liberality, gives assurance that the Zetland gentlemen would obviate every difficulty to effect an arrangement which should be just and beneficial to all parties concerned.

This letter having reached Orkney in November 1793, a county meeting was called (but in what manner cannot now be ascertained) to consider this letter and relative documents. It was attended by two freeholders and one commissioner of supply, (26th November 1793) who, “in respect of the importance of the subject of these productions, the thinness of the meeting, the absence from Orkney of several principal proprietors, adjourn this meeting to the first Wednesday of February next, against which time it is hoped that all the heritors of Orkney may have made up their minds on the subject.” Accordingly, on 5th February 1794, another meeting of the Commissioners of Supply was held, at which five persons attended. But, finding themselves still in the same situation,

they desired their agent at Edinburgh to call a meeting at Edinburgh of Orkney heritors, and to communicate betwixt them, “as
“ we wish to make it appear to the gentlemen of Shetland that it
“ is not the wish of the gentlemen hereto subscribing to occa-
“ sion any unnecessary delay in the attainment of the object which
“ the gentlemen of Shetland have in view.”

On 23d May 1794, the gentlemen of Shetland held a meeting, at which they had under consideration these proceedings of their Orkney neighbours; and, in order to prevent the waste of time in communicating with one another by way of Edinburgh, (which is still the only ordinary channel of correspondence,) they appointed a committee to go to Edinburgh to meet a committee from Orkney, and resolved that the very next Session of Parliament, if possible, they would bring on their petition in connection “ with our Orkney brethren’s proposed plan for obtaining a new valuation for that part of the country.” In communicating this resolution, Mr Gifford wrote, that “ it is with
“ the concurrence and approbation of Orkney, if it can be obtained, that Zetland wishes to procure their valuation.”

A meeting of the Orkney gentlemen in Edinburgh having been called by their agent, it was attended by four of their number, who adjourned, for “ the farther consideration of this
“ business, to Wednesday 16th July inst.” when they hope the committee appointed by the gentlemen of Zetland will attend. At this meeting a letter from the late Lord Dundas to his agent was produced, in which his Lordship writes, “ I request
“ that you will inform the meeting that I shall most willingly
“ co-operate in any measures which may tend to put the gentlemen of Zetland upon the same footing with the other free-
“ holders of Scotland, and I hope the meeting will form a plan
“ which may carry the wishes of the gentlemen of Zetland
“ into effect with as little delay as possible.”

The 16th of July arrived—but none of the Orkney gentlemen attended the meeting which they had proposed for that day. The Zetland committee, however, attended, and stated in the minute that their new bill was a modification of one prepared in 1792, transmitted at that time to the Orkney gentlemen through Mr Hope, Sheriff-depute of the county, and that, as now digested, it would appear “ the Zetland gentlemen

“ have resolved to confine their application merely to the establishment of a valued rent, without requiring *any alteration or innovation* whatever in regard to *the* MODE of election of a representative to serve in Parliament.” They directed copies of the amended bill to be printed and distributed among the freeholders of Orkney, and desired a meeting with them at Edinburgh on the 24th of the same month, when Sir William Honyman, the late Admiral Graeme, and Mr Gilbert Laing met with Mr Gifford of Busta and Mr Nicolson of Lochend: “ And, (Mr Honyman being preses,) having read over the printed sketch of a proposed bill to Parliament by the gentlemen of Zetland, and having conversed with the Zetland gentlemen thereon, IT DOES NOT APPEAR TO THEM THAT ANY EXCEPTION LIES AGAINST THE TERMS OF THE BILL PROPOSED; and they direct this minute to be transmitted to Orkney for the consideration of such gentlemen as may chuse to attend a general meeting for the purpose of examining the object of this bill. (Signed) WILLIAM HONYMAN.

The first bill prepared by the Zetland gentlemen had contained a variety of clauses with respect to the *mode* of conducting elections after a valuation of Zetland should be obtained; such as, that the freeholders from Zetland might send written votes, &c. involving much debateable matter of detail; but the Orkney gentlemen having professed to have no objection to admit their Zetland brethren to a participation in the privilege of voting, as a consequence of a valuation in Zetland being obtained, the Zetlanders seem to have considered it better to omit in their new bill all those details which would imply any alteration or innovation in the mere *mode* of election. Accordingly, the new bill was limited to the mode of establishing and apportioning the valued rent of Zetland, and at same time openly pointed out one of the most important results, viz. that all the land owners of the stewartry were entitled to equal privileges, particularly in the choice of representatives to Parliament, and that those of Zetland having valued rent to the extent of L.400 “ shall be entitled to be enrolled freeholders of the stewartry of Orkney and Zetland.” The sketch of the proposed bill bore this on its front: but every clause as to the *mode* of exercising that right, or regulating elections, was

omitted; and therefore the Zetland committee stated only the correct fact, when they said they had abandoned all the clauses by which alterations or innovations were projected in the *mode* of election. If they had obtained their bill they must just have claimed enrolment among the freeholders, and attended elections at Kirkwall, as if their estates had been situated in Orkney instead of Zetland, subjected, no doubt, to all the inconveniencies arising from their remote residence.

But the bill thus modified had been only approved of two days by the Orkney gentlemen in Edinburgh, when a correspondence betwixt the agents commenced. The agent of the Orkney heritors (who had not been present at the meeting) stated in a letter of 26th July 1794, that he was informed “that, *at the meeting* on the 24th inst., the gentlemen of the “Shetland committee then present agreed to the propriety of “expunging from the printed sketch of the proposed bill such “parts of it as appear to go beyond” “the establishment of a “valued rent, and to declare the right of voting in consequence “of the valuation.” And he requested such alterations accordingly to be made for the consideration of the Orkney gentlemen. The original minute of 24th July is now before me, and *there is not one word in it* implying that they were to abandon their claim to an elective franchise, or to make any alteration upon that sketch, to which the Orkney gentlemen found no exception. The agent for Zetland replied, that, as the right of voting was “one of the chief objects the Shetland gentlemen “have in view, it seems to be right that it should be openly “spoken out, and not be left to be drawn as a silent consequence from the obtaining of the valuation.” He, therefore, and his constituents, proposed to let the bill stand as it was, and be transmitted to the gentlemen in Orkney with the minute of the meeting 24th inst. The bill was accordingly sent to Orkney, and a meeting held, (20th August,) at which there were nine persons present, some of whom were not even heritors nor freeholders, but factors; and this meeting “declared “their readiness to consent to any act being passed which goes “no farther than to the point of establishing a valuation of “Shetland, which point the Shetland gentlemen themselves, in “their sederunt of the 16th of July last, declared to be all

“ they had in view.” [This is a distortion of their language.]
“ But the meeting are not equally ready to suffer to pass in
“ silence any act which *might establish rights which it would*
“ *appear* the gentlemen of Shetland themselves, or their agent,
“ Mr John Anderson, are doubtful *might not belong to them,*
“ even although they had a valuation ;” and, therefore, upon
this luminous ground, they sent the bill and this their resolution back to their brethren in Edinburgh for their consideration, without condescending to explain what particulars in the amended bill were obnoxious to their feelings.

Another meeting of Orkney gentlemen was held on 8th October thereafter, at which all these minutes and correspondence, with some remarks by the then Sheriff-depute and Mr David Balfour, were laid before the meeting. Mr Handyside, for Lord Dundas, stated, that his Lordship had written him, “ as I
“ cannot *now* attend the meeting as a *freeholder*, I must decline
“ giving any opinion on the subject,”—and the meeting adjourned to the 16th of the same month.

There are some statements in the papers produced which deserve to be recorded as matter of *testimony*, by two most respectable individuals, Mr Hope (now Lord President,) and the late Mr David Balfour. “ When the business was first mentioned to me (says the former) by the gentlemen of Orkney,
“ I expressed very freely my opinion of the justice of the
“ claim made by the landholders of Shetland. None of the
“ gentlemen of Orkney did at that time, as far as I can recollect, differ from me on that general point. They only complained that the gentlemen of Zetland were proceeding too
“ rapidly, &c. and they mentioned to me some circumstances,
“ *particularly the confusion of all the different lands in Orkney,*
“ which they thought should be adjusted before going to Parliament.” Again, with respect to the mode of voting, at which the Orkney gentlemen had begun to startle, he says, “ If the right
“ is acknowledged to be in the landholders of Zetland, there can
“ be no harm in declaring it ;” “ and *if the gentlemen in Orkney*
“ *are in earnest in the profession they made to me that they had*
“ *no objection to allow those of Zetland to participate with them in*
“ *the right of freehold*, they ought not to oppose such a
“ clause ; for surely it can do harm to declare a right which

“ either already exists, or which, at any rate, they are not dis-
“ posed to dispute. If, therefore, Orkney shall continue to
“ object to this clause, the gentlemen must either *have changed*
“ *their minds, or they are not dealing candidly*, which I cannot
“ suppose. If they have changed their minds, they should state
“ their reasons.” “ I will not believe that the gentlemen of
“ Orkney are not dealing candidly ; but I own their opposing
“ this clause has to me, *after their former professions*, something
“ of that appearance.”

“ It appears to me (says Mr Balfour) that the heritors of
“ Shetland have an equitable claim to participate in the right
“ of election with those of Orkney, providing this is done
“ without injuring *in any other respect* the interests of the Ork-
“ ney freeholders. For my own part, therefore, as an indivi-
“ dual freeholder of Orkney, I have no objection that the in-
“ tended act of Parliament should *both* establish a valued rent
“ for Shetland, and also declare that such valuation shall afford
“ a qualification for voting in the election, providing this is
“ done without putting the gentlemen of Orkney in a worse
“ situation than they are at present, *excepting so far as the com-*
“ *munication of the right of voting may be viewed in that light.*”
But, by the proposed sketch, he thought some inconveniencies
would arise, which ought to be provided for in the bill. 1st,
As to the mode of publishing the writ for an election ; 2d,
“ *The original record of the valuation of Orkney is lost ; and*
“ though all parties in that country have acquiesced in holding
“ as authentic the copy thereof which I believe is extant in the
“ hands of the sheriff-clerk,” [there is no such copy in his
hands,] “ yet, when the heritors of Zetland are once entitled
“ to state the objection, *it may perhaps be alleged that this copy*
“ *is not authentic, and no evidence of the valued rent of the se-*
“ *veral lands therein mentioned.* The present bill ought there-
“ fore to prevent the possibility of such an inconvenience, by
“ a clause declaring that copy to be authentic, and legal evi-
“ dence in all cases. 3dly, From the manner in which the va-
“ luation roll of Orkney was at first made up, mentioning, in
“ most cases, *not the names of the lands, but only of their pro-*
“ *prietors*, and from the various changes and divisions of pro-
“ perty since, it is well known that *it has become impossible to*

“ascertain the valued rent of many lands in Orkney; and as
“the valuation of all the lands in Shetland will by this act be
“made perfectly clear, it seems just and necessary that it
“should provide some ready method of putting the valued rent
“of the lands in Orkney on the same clear footing,—which per-
“haps might be done by a clause in the bill authorising the
“commissioners of supply in Orkney, or any five of them, to
“ascertain what lands each article in the valuation-book is ap-
“plicable to, and declaring their decree to be final if not ob-
“jected to before the Court of Session within six months.”

There are in these remarks, 1st, The testimony of two gentlemen of high character, that, prior to 20th August 1794, all the most considerable landholders in Orkney had admitted the justness and fairness of those in Zetland being entitled to vote as freeholders, and getting a valuation of their lands as the basis of their title. 2dly, The express statement of Mr Balfour that there was no valuation in Orkney, or evidence of its having been taken, and that the unauthenticated scraps on which, by collusion, the different parties in Orkney were enrolled as freeholders, did not contain a real valuation of the district; consequently, that the rights of freehold assumed by the Orkney heritors were altogether fictitious, arising, as they did, on unwarranted certificates of valuation. 3dly, It appears to have been thought not unjust to break faith with the Zetland gentlemen, and oppose their obtaining their rights in a *clear* manner, because the freehold rights of Orkney were obscure, or rather most clearly vitiated and liable to challenge: and all the objections stated to the rights of Zetland were centered in the single fact, that the heritors of Orkney had bungled their valuation, and lost the record-book in which, defective as it was, that valuation was registered. But to return to the public proceedings.

On the 16th of October 1794, Sir William Honyman, Admiral Graeme, and Mr David Balfour held a meeting at Edinburgh, to express anew their sentiments. Sir William stated, as the minutes bear, that, on the 24th of July preceding, the Zetland gentlemen had represented they confined their object merely to the obtaining of a valuation, “without requiring any
“alteration or innovation whatever in regard to the election of

“ a representative,” omitting in the statement the words “ *mode* “ *of*” before “ *election*,” which was the real import of their communication ; for, when the printed bill contained two clauses, both pointing expressly to the right of the Zetlanders to vote at the elections,—and when that bill was before the eyes of Sir William at the moment *he signed the minute that it was unexceptionable*,—it seems quite impossible to imagine that the Zetland gentlemen, on 24th July, said they abandoned those two clauses in the bill, or that they did not require such an alteration and innovation “ in regard to the election” as should admit them to a participation in that act. In such cases the record is the proper evidence ; and as Sir William Honyman’s statement at this meeting, of what passed at the former one, is not supported by the record or any other evidence, it cannot be regarded as the regular account of the *res gesta* ; nor is a long narrative of another private conversation, said to have taken place, of any consequence, as it is not inserted in, but is rather contradicted by, the record at the proper time. But, upon the *assumption* that all these statements of his were correct, Sir William “ conceived it to be *the duty* and interest of every freeholder and landholder in Orkney to resist such attempt as *illegal* and *unwarrantable* in itself, injurious to the *immemorial rights* and *privileges* of the landholders of Orkney, and tending to introduce *a partial and unmeaning reform*, and *subversive of the right and privilege of election* in that part of Scotland. He therefore desired that it should be communicated to the gentlemen in Orkney, that he, as an individual, would concur with such of them as might entertain the same sentiments with him upon the subject in opposing the bill proposed.”

“ Captain Graeme (who was present at the meeting referred to by Sir W., *but does not confirm his account of what passed*) stated that he was not aware of any objection to the printed sketch of the bill given in by the gentlemen of Zetland ;”—thus adhering to what he had said at the former meeting : and Mr Balfour merely referred to his remarks, and the expediency of guarding against the inconveniencies therein pointed out. With these several deliverances at Edinburgh on the bill, it was sent back again to Kirkwall for the re-consideration of the gentlemen there.

A meeting was called “ by a written note which the officer
“ had carried to all the freeholders and commissioners of sup-
“ ply in and about Kirkwall ;” and a meeting was held on 5th
November 1794, at which “ Major Thomas Balfour” and “ Dr
“ Robert Groat,” the former a freeholder, the latter a com-
missioner of supply, attended, and no other person. The for-
mer gentleman, after expressing some opinions on several re-
lative points, remarks, that “ precaution is necessary, *particu-*
“ *larly with respect to the authentication of the valuation of*
“ *Orkney* ; and, with respect to the mode of publishing the
“ writs of election for the county, as the gentlemen of Zet-
“ land cannot be supposed to aim at a fair participation of the
“ right of election, proportionate to the cess they pay, com-
“ pared to that paid by Orkney, their bill, which will make
“ their own valuation perfectly clear, should provide some
“ remedy for the *defects of ours*: That, in their sketch of the bill,
“ the cumulo valuation of Orkney is said to be L.56,561, 9s. 1d.
“ Scots, and it is inferred that the valuation rent of Shetland
“ should be half that sum. But, soon after the valuation in
“ 1653, the valued rent of Orkney *was reduced* below the above
“ sum, and for this lower sum Orkney continues to pay cess ;
“ and, of course, Shetland, paying half of the sum of the cess
“ paid by Orkney, should have half only of the reduced valued
“ rent above-mentioned : That these preliminaries being set-
“ led, and these provisions made in a bill for the valuation of
“ Shetland, he had no objection to that bill conveying to the
“ gentlemen of Shetland their due share of the right of elec-
“ tion,” &c. “ Dr Robert Groat declared himself to be of the
“ same opinion.” This meeting, being so thinly attended, ad-
journed to the Michaelmas head-court, which was then at
hand. But no Michaelmas head-court was held that year :—and
thus ends the Orkney record of these negotiations.

Before proceeding to state those particulars, or the grounds
and nature of the opposition which was afterwards made to the
bill in Parliament, it appeared expedient to give a historical
view of the actual state of the imaginary valuation of Orkney,
because that is the very foundation of the strength on which
the gentlemen of Orkney repose and fortify themselves, re-

fusing to admit the men of Zetland into the sanctuary of the constitution unless they acknowledge on the threshold that this same fictitious valuation shall be held as perfect to all intents and purposes, or mended through the sides of the Zetlanders, and at their expense.

SECT. III.

ORKNEY and ZETLAND one Shire or Stewartry.
1795, 180—.

THE landholders of Zetland having, early in 1795, introduced a bill into Parliament for establishing and appointing a valued rent in those islands, the freeholders of Orkney petitioned against leave being granted to bring in the bill; and having failed in their attempt on that occasion, the Zetland gentlemen made another some years after. In a printed case for the petitioners against the bill, the following statements are to be found: and they constitute the basis and substance of their opposition.

“ By an act of the Scottish Parliament passed in the year
“ 1540, these islands (Orkney and Zetland) were annexed to
“ the crown of Scotland, by the description of ‘ the Lands and
“ Lordshippe of Orkney and Zetland, and the Isles pertaining
“ thereto, and their pertinents.’

“ These islands became the subject of successive grants from
“ the Crown to Lord Robert Stewart, anno 1565; to the Earl
“ of Bothwell, who was created Duke of Orkney, anno 1567;
“ to Robert, Earl of Orkney, anno 1581; to William, Earl of

“ Morton, anno 1643 ; and to George Grandison in 1662. This
 “ last proceeded upon an act of Parliament passed in the se-
 “ cond session of the first Parliament of King Charles II.”

“ Even *previous to the first of these grants*, it appears that
 “ *these islands had become separate jurisdictions, each* having its
 “ heritable office of sheriff; for the islands were granted to
 “ Lord Robert Stewart, cum officio vicecomitatis de Orkney, et
 “ vicecomitatus et lie fouldrie de Zetland.”

“ The above grant to the Earl of Morton in 1643 is made
 “ una cum hereditariis officiis Justiciariæ, vicecomitatis et lie
 “ fouldrie; and in the above act of Parliament, upon which
 “ the grant to Lord Viscount Grandison proceeded in 1662,
 “ there is included the heritable office of justiciary, sheriffship,
 “ and foudrie.”

“ Orkney and Zetland became united into one stew-
 “ artry; but no change was made upon their elective rights by
 “ the junction. An *intention* appears to have been entertain-
 “ ed of erecting them into a stewartry, by an act passed in the
 “ year 1612. The right of Orkney and Zetland to send Commis-
 “ sioners to Parliament is not taken away by this act.”

“ The *County* of Orkney and the *Fouldrie* of Zetland remain-
 “ ed separate jurisdictions until the year 1669, when an act was
 “ passed (c. 13.) by which the islands of Orkney and Zetland
 “ were erected into one stewartry, to be called the stewartry
 “ of Orkney and Zetland; the office of sheriff was suppressed,
 “ and it was ordained that the tenants, possessors, and inhabi-
 “ tants within the bounds aforesaid, and other persons who were
 “ formerly answerable and liable to the jurisdiction of sheriff
 “ and fouldrie should be answerable to his Majesty’s steward
 “ of the stewartry,”—“ *without prejudice to his Majesty’s vas-*
 “ *sals within the said Isles of their liberty and privilege to have*
 “ *and send Commissioners to Parliament to represent them in the*
 “ *same manner as they DID, or MIGHT HAVE DONE FORMERLY.*”

“ The rights of both parties therefore now rest (it was infer-
 “ red) upon this statute; and *unless* the proprietors of Zetland
 “ can show, that *previous* to the passing of this act they possessed
 “ the right of voting *in conjunction* with the freeholders of Ork-
 “ ney in the election of their Commissioners to Parliament, it is
 “ obvious that their present application, which is to enable them

“ to exercise that right, cannot be listened to. *But the fact of*
 “ *their being separate jurisdictions previous to the passing of this*
 “ *act, and Orkney being a sheriffdom entitled to send and hav-*
 “ *ing sent its own Commissioners to Parliament, appears, to the*
 “ *freeholders of Orkney, alone sufficient to negative the intro-*
 “ *duction of the bill now prayed for, independently of the other*
 “ *reasons,*” &c.

Without commenting at present upon the construction put by the Orkney freeholders upon the documents referred to, as affording evidence of their assumption that Orkney and Zetland were *separate jurisdictions* prior to the act 1669 erecting them into a stewartry, or at any time before or since, it may be satisfactory to see how the fact really stands according to the whole body of extant evidence upon the subject—some of which, although fully stated in the chronicle and appendix, it may be expedient very briefly to recapitulate, as it bears upon this matter.

The Orkney and Zetland islands were transferred *together* in pledge by Norway to Scotland, in security for the dowry of the Queen of King James III: and in the prior antient treaties by which the annual tribute to Norway was created, the King of Norway expressly *reserved*, from the alienation of islands adjacent to Scotland, those “ of Orkney and Zetland.” When, therefore, those two clusters of islands were pledged to Scotland in 1468, they were a province of a foreign state; and the rights of St Clair, Earl of Orkney and Zetland, as well as the Norwegian laws, were preserved entire. The King of Scotland having afterwards exchanged lands in Fife for his right of the Earldom of Orkney, an act of Parliament was passed, whereby were “ annext and unitit *ye Erledome of Orkney and ye*
 “ *Lordship of Schetland* to the Crowne.” In the general act of annexation during the reign of King James V. there are included (10th Dec. 1540) “ *The landis and lordship of Ork-*
 “ *nay and Zetland, and the islis pertaining thereto and their*
 “ *pertinentis.*” Orkney and Zetland being thus an annexed estate, of the Crown, it was let out on temporary leases; and grants of jurisdiction also flowed from the Crown. Whether the terms shire and sheriffdom were at the time considered applicable to this outskirt of the Scottish monarchy cannot now

be ascertained ; but the jurisdiction actually created seems to have been a combination of the Scottish and Danish, rendered expedient by the equivocal state of annexation in which the islands stood to Scotland. Of this date, (1489, May 29,) a tack was granted for 13 years to Patrick, Earl of Bothwell, “*terris et Dominiis Orchadiæ et Shetland, cum suis pertinentiis,*” &c; and besides a lease of the castle of Kirkwall, there is also a grant of *jurisdiction* for the same period, “*Officiis Justiciariæ Folderiæ et Baliatus dictarum terrarum et domini- niorum.*” (Vide Haddington’s Coll. p. 233.) There is a similar assedation and grant to Henry Lord Sinclair in precisely the same terms.

The first mention of Orkney and Shetland as a sheriffdom is in Lord Robert Stewart’s grant of 1556, in which the lands and isles of Orkney and Zetland, &c. are given, “*with the sheriffship of Orkney and the sheriffship and foudrie of Zetland,*” an expression which does not seem to imply that they were *separate* sheriffships or shires, but merely confers authority on the same man over both districts of the islands, *which formed but one estate*; and afterwards the “*offices of justiciary, sheriffship, and foudry, pertaining of old*” to that estate, are spoken of in the charter of King James VI. 1581.

Again, in the intermediate contract of marriage betwixt Queen Mary and Bothwell Duke of Orkney, (1567, May 14.) the whole islands are constituted into a dukedom, and of the following description: “*All and hail the erldom, landis, and isles of Orknay, and lordship of Zetland, with the holmes, &c. erected in ane hail and fine dukerie, to be callit the dukerie of Orknay for ever; togidder with the offices of sheriffship of Orknay and foudry of Zetland, and office of justiciary within all the bounds alsweill of Orknay as Zetland;*” all “*unitit in ane hail and free dukry, to be callit the Dukry of Orknay for ever.*” Here there is no mention of two separate shires.

The last grant of Orkney and Zetland to Robert Earl of Orkney and Patrick his son in fee (1591, March 11.) which was ratified by Parliament (1592, Acts, c. 94.) thus describes the estate: “*All and hail the erledome of Orknay and lordship of Zetland, &c. whilkis are all unite, annex, and incorporat*

“ in the said erldome and lordship, and endewit with the estait
 “ and honour of a Lord in Parliament ; togidder with the offices
 “ of justiciare and sheriffship of the said Erldome and Lord-
 “ schip,” &c. There is still no separation into two shires.

While the proceedings were pending against Earl Patrick, his estates were annexed to the Crown, (1612, Oct. 23, Acts, ch. 15.) “ togidder alsua with the offices of sheriffship, justiciary, and foudrie of *Orkney and Zetland*,” conjointly ; and both clusters of the islands were “ erected into a *Stewartrie*, “ and all persons previously answerable to the sheriffship “ and foudrie above written to be answerable to his Hieness “ stewart.” The act of Privy Council for publishing the same refers to the annexation as of “ all and sundry the lands and “ isles of the earldom of Orknay and Zetland.” Bishop Law got commission not only to intromit with the rents, &c. of “ the “ said Earldom of Orkney and Zetland, bot likewise to adm- “ nistrate, use, and exerce the offices of sheriffship, justiciary, “ and foudry of the said earldom.”

By a commission dated 16th June 1612, his Majesty constituted “ the said James Bishop of Orkney, and his deputes, his “ Majesty’s sheriffs, justiciars, and commissioners within the “ said bounds of Orkney and Zetland.” The Bishop held a court (31st July 1612) as “ His Majesty’s commissioner, she- “ riff, and justice in *the bounds* of Orkney and Zetland,” within the Cathedral Church of St Magnus. On 10th August there- after, he held, “ *Curia Vicecomitatus de Orkney et Zetland*, “ *apud domum de Soundburgh*,” as Commissioner of the King, “ *et vicecomitatem dicti vicecomitatus*.” His next court is 18th August 1612, “ *Curia vicecomitatus de Orknay et Zetland tenta* “ *apud castellum de Skallaway in aula ejusdem*.” “ *Curia* “ *vicecomitatus de Orknay et Zetland*, tenta apud Castellum de “ *Scallaway*,” appears on the record 21st of the same month, and continues by Bishop Law as King’s commissioner, “ *et vi-* “ *cecomitem dicti vicecomitatus*.” And he holds various other diets of Court, on the 22d, 25th, and 26th days of the same month, in Zetland ; after which the minutes of Court begin again at Kirkwall on the 7th of September 1612. On 3d November thereafter, Mr Henry Aitken, sheriff-depute, produced his commission, and we find, “ *Curia capitatis viceco-* “ *mitatus de Orknay et Zetland*, tenta apud urbem de Kirkwall

“infra palatium de Zairdis,” &c. Aitken is designed “Vice-comitem deputatem dicti vicecomitatus.” A head court, in precisely the same terms, is held by him on 19th January 1613, and another on 23d February the same year. This commission, as depute-sheriff under Bishop Law, as King’s commissioner and sheriff over Orkney and Zetland, seems to have ceased 1st May 1613. All this is pretty good proof that, *prior* to 1669, Orkney and Zetland were but one county, shire, or stewartry, and under one jurisdiction: consequently the statement by the Orkney gentlemen, that they were separate prior to that date, is quite unfounded.

The church-estate, which, prior to 1612, was intermixed with the Earldom, and all the lands in the different islands of Orkney and Zetland, was disjoined therefrom in a great measure by excambion in October 1614 betwixt the King and Bishop. The estate of the latter was thrown into a particular territory, being the more southerly parishes of Orkney. A distinction was then created betwixt the Bishopric and Earldom, each forming a separate district and jurisdiction. The Earldom included a considerable part of Orkney and all Zetland, and to it were annexed judicatures and judges. The Bishopric, too, had its own sheriffs; and those persons administered justice in their respective departments. The Bishop’s courts were held in the Cathedral or the large hall of his palace; the Earldom sheriff-courts in Orkney were held within the castle of Kirkwall until it was demolished, and afterwards in the hall of the Earl’s palace, or in the Cathedral church, (*nulla alia loco existente curiarum tentione*,) the Earldom sheriff-court for Zetland being held generally in Scallaway castle from 29th May 1615 to 20th December 1628, by the deputies who held grants of the King’s sheriffship over the Earldom. There were thus two sheriffships, the Earldom and Bishopric; but Orkney and Zetland were not separated into two shires; the whole Earldom of Orkney and Lordship of Zetland being vested in the Crown as one estate, and the jurisdictions of justiciary and sheriffship over both being in the gift of the Crown, while those of the church-estate belonged to the Bishop.

Accordingly, after the separation in 1614 of the Earldom and Bishopric, the Earldom jurisdictions thus began to be exercised

on 5th May 1615: “*Curia justiciaria vicecomitatus de Orknay et Zetland*, tenta apud castrum de Kirkwall,” per “Henricum Stewart de Carlougie, et Magistrum Willielmum Livingston, vicecomites deputatos *dicti vicecomitatus* ;” and “*curia capitalis vicecomitatus de Orknay et Zetland*,” per deputatos vicecomites, (7th June;) but, on 22d June 1615, Mr Livingston seems to have transferred his labours for a time to Zetland, for, of that date, we have “*curia balivatus de Zetland*, tenta apud Measound in Unst, per honorabilem virum Magistrum Willielmi Livingston, vicecomitatum ac balivi, deputatem *de Orknay et Zetland*.” And, on the 1st of August, we find on the record, “*curia vicecomitatus de Zetland*, tenta apud castrum de Scalloway Bankis,” by Livingston as sheriff-depute, in which character he acted till 9th November 1616. Previously to this, however, viz. on 27th October 1615, he and Henry Stewart held a sheriff-court of *Orkney and Zetland* at Kirkwall, and also a head-court on the 7th of November, which is described as “*vicecomitatus de Orknay et Zetland*.” At that court a great many county laws were passed by the “sheriff-depute, with advise of the gentlemen suiteris of court and commons.” A similar set of statutes had been passed in Zetland: and there is a head-court mentioned in the record, 4th January 1617, “*vicecomitatus de Orknay et Zetland*, tenta apud Kirkwall in nova domo prope palatium de Zeardis ibid per honorabiles viros,” viz. Henry Stewart and William Livingston, “*vicecomites deputatos dicti vicecomitatus*.” But when the record thus indicates clearly that the *Earldom* of Orkney and Lordship of Zetland were one sheriffdom, the first election of a Commissioner to Parliament took place, and the proceedings are recorded as follows: It will be recollected, too, that, previous to 1614, it was not competent, at least necessary, to send representatives from these islands, as the Earl and Bishop were both Lords of Parliament, and represented their respective districts in Parliament without any commissioners from the shires.

“Vigesimo quinto Martii 1617.

“The quhilk day Harie Stewart of Carlougie, sheriff-depute of Orknay, haveing conveyit ye gentlemen and friehalderis within the said shrefdome for choising Commissioners to ye ap-

“ proaching Parliament to be haulden at Edinburgh the twen-
 “ tie-sevin day of May nixtocum, conforme to ane warrand
 “ direct be ye Lords of Counsell to that effect, *ane certane*
 “ *number compearand, seeing they had not bein burdenit with*
 “ *ye lyk of befoir, tuik ye morn to advyse.*

“ Vigesimo sexto Martii 1617.

“ The qlk day the gentlemen and frieholders within this
 “ shrefdome haveing met againe this day to ye effect above-
 “ written, all in ane voice, for ye maist pt. ellectit James Stew-
 “ art of Gramsay and Mr Robert Hendersone of Holland com-
 “ missioners ; qrupon the said shreff-deput askit actis and instru-
 “ mentis, and delyverit the precept direct furth of the Chancel-
 “ larie, under the testimonie of ye Great Seal, and yrupon
 “ askit actis and instrumentis, qlk the saidis Commissioneris ac-
 “ ceptit in and upon them conditionallie ; that is, they sould
 “ have suplie of money for defraying yer charges ; yrupon askit
 “ actis and instrumentis.”

“ Vigesimo nono Martii 1617.

“ The qlk day in the Conventioun halden be the ryt honoble
 “ Harie Stewart of Carlougie, shreff-deput of Orknay, ane
 “ great number of the gentlemen and frieholders being conve-
 “ nit for electioun of Commissioneris to the aprocheing Par-
 “ liament to be haldin the xxvii day of May nixttocum, con-
 “ forme to ane warant direct be ye Lords of his Majestie’s most
 “ honorable Privie Counsell to that effect : The said Shreff-
 “ deput having considderatioun of the not frequent repair on
 “ the dayes preceeding furth of the isles for storme of wea-
 “ ther, and of the opposition and contradictiones of certane
 “ gentlemen being present at the former ellection ; and spe-
 “ ciallie, that the said warrand direct to him did onlie extend
 “ to the gentlemen and frieholders within the illes of Orknay
 “ and shrefdome yreof, and that James Stewart of Gramsay,
 “ choisen in the ellection maid of befoir, was ane of the Bis-
 “ chopes vassalls, and within the shreffdome of the Bishoprick,
 “ on quhome he could impose no burdene ; and that by voit
 “ ane new ellection sould be maid ; Mr Robert Henderson of
 “ Holland, the uther of ye saidis first Commissioners being per-

“sonallie present, redelyverit to the said shreff-deput the pre-
 “cept receaved be him directit be ye saidis Lordis under the
 “testimonie of the Great Seale, and dimittat hes former act
 “and protestatioun, and thereupon askit actis and instru-
 “mentis: And *ane certane number* being set doun in leit to the
 “effect above written, thair was nominat and choisen in Com-
 “missioneris of new, the said Mr Robert Hendersone of Hol-
 “land and Edward Sinclair of Essinquoy, quha acceptit the
 “same in and upon thame, and thereupon askit actis and in-
 “strumentis; to quhome the said Shreff-depute delyverit the
 “precept, and yrupon and upon all and sundrie the premisses
 “askit actis and instrumentis.

“The qlk day Mr Rot. Hendersone of Holland and Edward
 “Sinclair of Essinquoy, being ellectit Commissioners to the
 “approching Parliament, to be halden the xxvii day of May
 “next, conforme to ane warrand, &c. protestit that ane rea-
 “sonable stent myt be maid for the advancement and mante-
 “nance. Qrupon the said Shreff-depute, wt. advyse and con-
 “sent of the gentlemen and freehalderis, condescendit, and be
 “voittis grantit, for ye advancement and maintenance as said is,
 the sume of ane thousand merkes money, and appointed
 “collectors to levy it in the different Earldom parishes of Ork-
 “ney;”—no part of Zetland or of the Bishopric appearing to be
 burdened, except Stennes and Erie, in which the whole es-
 tate of Bellenden was held feu of the Bishopric.*

It may be proper to notice, that in the separate record of
 the Courts of Zetland there is a hiatus from 9th November
 1616 to 26th June 1617, at the latter of which dates Robert
 Finlasone appears as sheriff-depute in a court held at Sand in
 Sandsting, and we see no more of Mr Levingston. In like
 manner, in the separate court-book for Orkney, Henry Stew-
 art holds sheriff and justice-courts for Orkney at Kirkwall,
 till 8th May 1622, when his judicial proceedings close. In nei-
 ther of the records is there any evidence that notice was given
 to the landholders of Zetland, or that any of them was present
 or absent, or that they were considered as liable to or exempt-
 ed from bearing the burden (as it was then deemed) of going

* Vide Sheriff-court Record, Vol. I. Fol. 91.

to Parliament, although at the time the law allowed all the lesser Barons, if they chose, either to attend or send commissioners; and even lists of the persons voting do not seem to have been kept, so little was the qualification then valued.

In the Orkney Court-book, 21st January 1623, Sir John Buchanan of Scotsraig, as sheriff principal, holds a Court, "*Vicecomitatus de Orknay et Zetland*;" and continues to do so as sheriff and justiciare of Orkney and Zetland, at many trials and on numerous services, until 9th November 1627, both districts being distinctly described as one sheriffdom. From the Zetland Court-book, 6th July 1620, Buchanan appears to have been at that time sheriff-depute in Zetland; but on 3d August 1622 he is described as "sheriff of Orknay and Zetland;" and the same designation continues in many sederunts of Court, retours of services, &c.; so that there can be no doubt that Orkney (excepting the Bishopric) and Zetland were only one sheriffdom.

The election 1617 was the first which took place in Orkney, and there is no evidence on record, as far as yet discovered, that there was another during the troubled times which followed in the reigns of Charles I. until the Restoration in 1660, when an election for Orkney and Zetland (including even the Bishopric) took place. The original record being now found, the following minutes are given from it:

"*Kirkwall, 5th December 1660.*

" Sederunt, Collonel John Stewart of Newark, Robert Stewart of Brugh, Hugh Halcro of that ilk, Patrick Monteith of Eagleshaw, George Smith of Rapness, James Baikie of Tankerness, *Mr George Buchanan of Sound*,* MR JAMES MOWAT OF OLABERRY,† Robert Sinclair of Sabay, Mr Patrick

* All those whose names are in italics were feuars holding of the Bishop, (not one of whom it is believed held of the Crown) except the Bailie of Kirkwall, who as such does not seem to have been entitled to vote for a commissioner of the shire.

† This gentleman was unquestionably a landholder in Zetland; yet he is admitted to the sederunt, and concurs in the election without challenge or objection.

“ Grahame of Rothesholme, *John Grahame of Breckness*, James
 “ *Stewart of Gramsay*, James Traill in Westness, John Smith
 “ of Huip, *George Sinclair of Gyer*, *James Moodie of Melsetter*,
 “ Arthur Buchanan of Holland, David Kincaid of Yinsta, Ro-
 “ bert Pottinger of Hobister, Thomas Craigie of Saviskail,
 “ James Grahame of Hatstoun, *David Sinclair of Cowbister*,
 “ David Sutherland in Hope, Donald Groat of Herstan, Mag-
 “ nus Craigie in Langskaill, *Nicol Cromarty of Newbigging*,
 “ *John Baikie Bailie of Kirkwall*, William Stewart of Newark,
 “ Nicol Aitkins, and David Craigie of Over Sanday.

“ The which day George Smith of Rapness was chosen
 “ preses, and five of their number being present upon the lite,
 “ Hugh Craigie of Gairsay was chosen Commissioner for his
 “ Majesty’s Parliament.

“ It was ordained by the unanimous vote of the table, after
 “ report made by the committee of their number appointed for
 “ ye effect underwritten, That their Commissioner, Hugh Craigie
 “ of Gairsay, shall have allowed to him for his charges and ex-
 “ pences in prosecuting his commission, ilk day, ten shillings
 “ Sterling, compting from the day of his transport over Penth-
 “ land frith untill the day of his return over ye said firth : As
 “ also, for ye better enabling him to render himself in a condi-
 “ tion in some measure suteable to other members of Parlia-
 “ ment of his rank, there is hereby ten pounds Sterling allow-
 “ ed him for helping to defray ye expenses of his apparell re-
 “ quisite for that effect ; and yt. by and attoure oyr contingent
 “ charges which our said Commissioner shall be put to after
 “ compt given in to us by him. (*Sic. subscr.*) GEO. SMITH,
 “ Preses.”* No list of Barons seem to have been made up.

In the Parliament to which this commissioner was sent, an
 act was passed (1661) for raising of the annuity of L.40,000
 granted to his Majesty and commissioners were appointed to
 levy the same on the different shires. Amongst the persons
 named “ for the *sheriffdom* of Orkney and Zetland,” are John
 “ Sinclair of Quendail, James Sinclair of Skallaway, Andrew
 “ Bruce of Munis, William Bruce of Soundburgh, *Mr James*

* Vide Record, F. I.

“ *Mouat*, Gilbert Niven, Chien of Eslemount, and Robert “ Hunter,” all heritors in Zetland ; and of the Bishopric heritors there was only Stewart of Græmsay.

After the Restoration, the courts of law again opened, 4th June 1661, in this form : “ *Curia prima vicecomitatus*, admiralitatis justiciarie et lie foudrie *vicecomitatus de Orknay et Zetland*, tenta apud Kirkwall in templo Sancti Magni ibid ;” and Lord Morton is described in the minutes as “ shreiff principal of the Earldome of Orkney and Lordship of Zetland, “ and justiciar and admiral thereof ;” the commission by him to Patrick Blair, as sheriff-depute, and many subsequent sederunts of the Court, regularly containing the definition of Lord Morton’s jurisdiction as the “ *Sheriffdom of Orkney and Zetland* :” and “ *Curia vicecomitatus de Orkney et Zetland*,” appears through the whole volume down to 10th November 1674.

If, again, the cotemporary proceedings of the county gentlemen be referred to, the fact is corroborated not only by the documents quoted under the head of “ Valuation of Orkney and Zetland,” but by various other adminicles of evidence. For instance, on 9th October 1662, there is inserted in the Register a petition, of which the following is the opening : “ To the “ Right Honourable the Earle of Morton, and our most noble “ Lord and Patron, The Humble Petition of the Gentlemen “ and Heritors of *the Shire of Orkney and Zetland*, for themselves, and in name and behalf of the whole inhabitants of “ the said *shyre* ;”—and this application is accompanied with various statements of assessments, &c. affecting Zetland as well as Orkney.

The next person sent as Commissioner from this shire was Patrick Blair the sheriff, who so often in his court-book described the whole islands as forming only one sheriffdom. He was suggested by the Lord and patron Morton, in a very curious epistle, as a person of great “ discretion, action, and “ respect,” which appears to have been the case ; and as the gentlemen found his Lordship’s reasons “ so to jump with their “ inclinations,” they on the 15th of April 1663 met for electing “ ane commissioner, to be sent instructed to this next “ ensuing Parliament, in place of Hew Craigie of Garsey, late

“deceast, last commissioner for *the shire*.” Accordingly, “they all of them in one voice do unanimously elect, nominat, “and chose ye said Patrick Blair commissioner for the shyre” to the Parliament. And although there does not seem to have been any Zetland gentlemen present, yet the commission 1663 is expressly to represent “*the Sherifffdom of Orkney and Zetland*.” And there is also a proof, that at that time the landholders were not very jealous about admitting their neighbours to the honour of a Baron, that the following vassals of the Bishop, few or none of whom held their lands of the King, were constituent members of the meeting, viz. Archibald Stewart of Burray, Arthur Buchanan of Sound, John Grahame of Breckness, “*present by the condescending missive* of the date the 14th instant,” Robert Halcro of Nanton, and William Gordon of Kerston. One of the instructions is, “that if the countrey of Zetland desyre to be separated from us and erected in a shire “by themselves, you are to consult wt. my Lord Morton “therein,”—a very idle and preposterous order if those gentlemen held it really to be a separate shire. On 24th July 1663 a letter appears in the county register from several of the most considerable of the gentlemen electors, addressed thus: “For “the much honoured Patrick Blair of Little Blair, sheriff of “Orkney and Zetland, and Commissioner to the Parliament for “*both countreys* ;” and, on the 27th of the same month, there is a letter from Mr Blair to the convener, to be communicated to the Orkney gentlemen, in which, with reference to the common concerns of the whole shire, he says, “Your other grievances and Zetland’s I have, by supplication, presented to his “grace (the Commissioner Middleton,) and the Parliament.” and, in the statement of their common grievances,* thus alluded to, those of Zetland make a prominent topic. In a petition “by Orkney and Zetland to the King’s Commissioner and “Lords of Articles, in respect Zetland (which is a third of *the shire*) is much impoverished by these exactions, and has but “little corns growing in it, it humbly craved there may be “some ease of the excise,” &c. In one of the “answers of “Orkney and Zetland against the Lord Sinclair’s bill for arms,

* Reg. p. 45.

“ 4th August 1663,” it is stated, “ that, in his Majesty’s service under his Excellency the late Duke of Montrose in anno 1649 and 1650, the countreys of Orkney and Zetland did lose the number of 2000 completely armed men, when no shire in Scotland appeared in arms for his Majesty *but they*.” And there are sundry deliverances already alluded to in discussing the valuation “ anent the petitions of *the shyre* of Orkney and Zetland,” 20th and 28th September 1663. On 10th November 1664 there is a full meeting of the Orkney gentlemen, and a formal concession signed by them all, which narrates, that warrant has been issued by the general collector for “ collecting the sum of L.3382 out of *the Sherifdom of Orkney and Zetland*,” and therefore they empower David Craigie, for “ the said whole shire,” to compound their arrears, &c. Subsequently, on 2d March 1666, an act of Exchequer is passed accepting of the composition from “ the sherifdom of Orkney and Zetland;” and this is followed by a commission from the collector to Craigie for his relief, which narrates, that “ the sherifdom of Orkney and Zetland were, by the accounts of the commissioners, &c. resting 22 months *mentenance*,” and that said *shyre* having named themselves by *their commissioner* in their names, &c.

The next election was in the end of the same year, and the sort of persons who elected the commissioners will best appear from the minute :

“ *Kirkwall, 20th December 1666.*

“ Sederunt—*Archibald Stewart of Burray, Mr Patrick Grahame of Greenwall, George Ballanden of Stenhouse, James Baikie of Tankerness, John Buchanan of Sandyside, Henry Grahame of Breckness, John Elphingstone of Lopness, William Sclaitter of Burness, James Lauttit Baillie of Harray and Stenness, William Douglas Baillie of Stronsay, Thomas Wilson of Hunclet, James Baikie in Kirkwall, George Spence there, David Drummond there, and Patrick Blair of Little Blair, preses and convener.**

● There were 12 persons undoubtedly either vassals of the Bishop or who did not hold any lands of the King, and only four who could be Crown vassals, if they ever were, which is doubtful.

“ The whilk day his Majestie’s proclamation being read publicly, commanding that a Commissioner should attend and serve from *this shyre* at the Convention of Estates to be holden at Edinburgh the 9th day of January 1667 years; and for obedience thereunto, the convener putting it to a vote whom they would nominate and appoint to attend the said convention, It was generally answered, That seeing Arthur Buchanan of Sound (a Bishop’s vassal) and William Douglas of Eagleshay was at South already, that the saids persons should be commissioners from *this shire* to attend the said dyet; and consents that a commission and instructions should be furthwith drawn against four of the clock this afternoon, and a post with all speed to be sent away with the commission and instructions to them for that effect; and that ye post be payd out of the public monys in our collector’s hands,” &c.

On 26th March 1667, in a meeting of Commissioners of Supply, at which (in Kirkwall) were present the Bishop, the Sheriff, and the commissioner for Lord Morton, they find, “ That the proportion of Orkney, per mensem, amounts to ye “ soume of L.725, 13s. 4d. *being the two part of the shyre*, and “ *Zetland’s proportion, per mensem, being a third part*, should “ pay L.362, 16s. 8d.” &c.—F. 89.

In the instructions, 2d September 1669, to Blair, as the commissioner to Parliament, he is directed to procure an act “ for the udallers of *Orkney and Zetland*, that their udal right “ may be sustained valid in all tyme coming as it has been “ since King James the Third his reigne.”—F. 118.

It would be quite superfluous to accumulate more evidence relative to the true grounds taken by the gentlemen of Orkney who opposed the bills brought into Parliament by the landholders of Zetland. They take the period from 1617 to 1669, as an era which, they say, furnishes proof, 1st, That, until the latter year, Orkney and Zetland were separate sheriffdoms and jurisdictions; 2d, That prior to that year none of the Zetland landholders had a right to or did concur in the election of commissioners to Parliament. And they contend, that “ unless “ the proprietors of Zetland can shew, that *previous* to the passing of the act 1669, they possessed the right of voting and “ did vote in conjunction with the freeholders of Orkney in

“ the election of their commissioners to Parliament, their application could not be listened to.” This doctrine amounts to a concession, that if the Zetlanders can shew that they had such a right, and did exercise it, and if Orkney and Zetland were one shire prior to the passing of the act, which the Orkney-men plead is the basis of both parties’ rights, the application of Zetland ought to be listened to.

It is quite impossible to figure a more groundless opposition than that which was set up on the part of the Orkney gentlemen; and a more palpable hypothesis than that on which they reasoned, in direct contradiction to fact, never was assumed by the most extravagant sophist. No historical facts are more satisfactorily established than that, from the first annexation of Orkney and Zetland to Scotland, they formed only one sheriffdom, (with the exception of the period that Episcopacy subsisted, when a part of Orkney formed the Bishopric sheriffdom,) and that they have always been under one jurisdiction. These facts are proved, beyond the reach of contradiction, by the evidence which has already been given, as far as the year 1669; and from that time downward, every record, act of Parliament, commission of jurisdiction, *and even the acts and deeds of the freeholders of Orkney themselves*, as registered in their minutes, prove incontestibly that Orkney and Zetland form only one shire or stewartry; and that the Commissioners to Parliament are chosen for and do actually represent “ the stewartry and sheriffdom of Orkney and Zetland.” If they will only look at their minutes of election and inrollment they will find this to be the case. And therefore it is quite unnecessary to say more upon the subject.

It is proved upon the record, that, in the year 1660, Mr Mowat of Ollabery, a Zetland gentleman, did concur in the election of the commissioner; and it is also proved to redundancy that the commissioners chosen did in all respects represent Zetland as well as Orkney. In animadverting on this fact, which is established by the commission and record, the Orkney gentlemen maintain that at the time alluded to the “ gentlemen inhabitants, or udallers, had no right by the law of Scotland to vote in the election of commissioner to Parliament;” because, say they, “ the qualification required was

“ a 40s. land of old extent, or lands liable in public burdens to the extent of L.400 Scots of valued rent, neither of which qualifications ever existed in Zetland.” They forget, however, that they are applying the law of 1681 to elections at least twelve, and some of them sixty years *before* the enactment of that law. Prior to that act, no such qualification as L.400 valuation was required. And it may with great safety be maintained, that every landholder in Zetland who had crown charters previously to that time, without reference to the value or extent of his lands, had an equal right with any heritor in Orkney, and a much better right than the sub-vassals of the Bishops, who themselves held of the crown,---or than the shopkeepers and idlers of Kirkwall,---or parish baillies of Stennes or Stronsay, whose names swell the list of electors in the sederunts which have been quoted*. That the gentlemen of Zetland did not attend *all* the meetings for electing commissioners, is nothing to the purpose. There is no evidence that they were warned; and even if they had got due notice, it is not marvellous that in those times, when the means of communication were less safe and comfortable than they now are, the Zetlanders did not venture through Sumbrugh Roost to vote at Kirkwall on an election in the very depth of winter. The privilege even now would not be worth purchasing at such a price. But it has been proved that, on one occasion, a Zetland gentleman did vote at an election prior to 1669, and that Orkney and Zetland were but one shire at that time, so that the very foundation of the Orkney objections is demolished,---and by the act 1669, which declared that the rights of election enjoyed by all parties at that date were to remain unimpaired, the rights of the Zetlanders, as then subsisting, seems to be fully preserved. Founding, therefore, on the principles of the Orkney men themselves, and establishing the facts which *they admit*

* By the act 1587, indeed, a “fourty shilling land in free tenantry, haldin “of the king,” and residence in the shire, were required; but did the Orkney men allege, or can they show, that all who voted at their elections prior to 1681 possessed such qualification? Is there one heritor in Orkney who can shew that his predecessors, in the year 1617, 1660, and 1669, held a 40s. land of the king in free tenandry? When that can be shewn, that person may cavil at the old titles of Zetland.

would warrant the Zetlanders to be "listened to," we fairly reach the conclusion, that until the year 1681, when a new qualification was introduced, the crown vassals in Zetland enjoyed an equal and joint right with those in Orkney to vote for a Commissioner to Parliament.

"But Orkney was valued in 1653, and no valuation was ever made of the lands in Zetland." The first proposition is a mere assumption. There is no more a valuation in Orkney than there is in Zetland, even at present. The whole record is proof. Certificates from unauthenticated and fictitious books have been received by the Orkney heritors, *among one another*, as very good evidence that *they* have the L.400 each of valuation required by the act 1681:---but every page of the procedure of their Commissioners of Supply evinces that at the present moment they are utterly destitute of a true valuation; and that the cess is levied upon arbitrary, unwarranted, and incompetent decrees of three or four Orkney Commissioners, and the *fiat* of their clerk. Suppose that the Commissioners of Supply in Zetland were to make a new valuation-book, as has been done in Orkney within the last twenty years, and, taking their merks and penny lands, with the cess which they have paid upon these, as the basis of their operations, were to calculate how much valuation ought to correspond to each pound of cess which they pay, and say, "this is the valuation of Zetland,"—where would be the difference betwixt such a valuation and that of Orkney? And suppose a crown vassal with L.400 Scots of valuation thus conjured up, were to crave inrolment on his charter, infestment, and certificate of valuation, with what face could an Orkney freeholder "take a distinction" and refuse to inrol him?

The plea founded on an article of Union, which excludes from capability of election all except those who were *then* capable by the laws of Scotland to elect or be elected, seems to be either a *petitio principii* or an absurdity. It is taking for granted that there is no legal remedy for subdividing the valuation of Zetland, or putting it quite on a level with that of Orkney, which is by no means an admissible position; or it insinuates that every man, in order to have a right to vote at an election in 1822, must have made up his title and been in a con-

dition to exercise his franchise in the year 1707. But in truth it is a shallow sophism, undeserving of serious exposure. Indeed the opposition altogether is extremely disingenuous, and discreditable to those who have urged it. Of its secret history and promoters, I know nothing. I have written from the record and the printed case for Orkney, having been unable to procure any information from Zetland. I have no concern with the politics of Orkney or of Zetland, if they have any thing that deserves the name; and I am not answerable for any practical inferences which may be drawn by one class of persons or another from the statements of facts which I have made. But in giving an account such as I can of Orkney and Zetland, it is my duty to state the truth so far as it is known to me, relative to one of the most prominent and singular circumstances connected with the islands.

SECT. IV.

ATTEMPT TO CORRECT VALUATION—1802, 1811, 1821.

HAVING abundant proofs, in the foregoing sections, that the valuation of Orkney was in a state of great disorder, and that it stood exceedingly in need of *authentication*, even at the time that its validity was assumed as unquestionable in Parliament, and seemingly conceded by the Zetland landholders in 1795, it is now proper to continue the detail of evidence with respect to its qualities, and to consider the proper remedy.

As there was no copy of the nominal valuation of Orkney in Exchequer, except an old one of the incomplete roll of names made up in 1653, which was of no use in indicating the persons liable for cess and composition, an order was issued

on 3d February 1802, by the Barons to the Commissioners of Supply throughout Scotland, to make up and lodge in Exchequer *a copy of their valuation-book*, with the names of the then proprietors. This order was not very welcome in Orkney, for many obvious reasons. The defects, or rather the total want of their imaginary valuation, was quite well known to the principal landed proprietors of Orkney. No notice was taken of the order, nor of a renewed order to the same effect on 3d February 1803. At length the Commissioners received the following notifications.

“ *Exchequer Chambers, Edinburgh, 28th June 1803.*

“ Upon reading a memorial from the presenter of signatures,
“ stating that the clerk to the Commissioners of Supply for the
“ county of Orkney had not returned *a certified copy of the*
“ *valuation-book* of the said county, as required by the order
“ of Court of date the 3d day of February 1802, and the re-
“ newed order of the 3d day of February last past ; and as
“ great inconvenience had thereby ensued to the public ser-
“ vice ; he, therefore, prayed that the clerk to the Commis-
“ sioners of Supply, in the county foresaid, be ordered to show
“ cause on Thursday the 24th day of November next, being
“ the first day of next term, why he has not obeyed the above
“ mentioned orders ; which being considered by the Barons,
“ their Lordships are pleased to order the same accordingly.”

Still the Commissioners did not move, and the following intimations to the clerk of supply were issued.

“ *Exchequer Chambers, Edinburgh, 10th December 1803.*

“ The presenter of signatures having prayed the Barons that
“ an attachment be issued against you for having failed to
“ obey the orders of Court of 30th February 1802 and 3d of
“ February last, in relation to returning into this Court *the va-*
“ *luation-book of your county*, as required by the first-mention-
“ ed order, I am commanded by their Lordships to inform
“ you, that the attachment prayed will issue against you un-
“ less the first-mentioned order be complied with on or before
“ the 15th January, being the first day of the next term.”

“ Exchequer-Chambers, Edinburgh, 30th April 1804.

“ I annex a copy of a letter transmitted to you on the 10th
 “ December last, and I have to acquaint you that, unless *the*
 “ *valuation-book of your county be returned into the office of the*
 “ presenter of signatures, in conformity to the order of Court,
 “ on or before the 22d day of next month, an attachment will
 “ issue against you, as directed by the order communicated in
 “ in my said letter.”

After another year's pause, they at length took up the matter as follows :

Kirkwall, 30th April 1805.

“ Present,—Robert Baikie, Esq. of Tankerness,—James Riddoch, Esq. of Cairston,—Thomas Traill, Esq. of Frotoft,—
 “ Dr Robert Groat of Newhall,—Robert Nicolson, Esq.
 “ Sheriff-substitute of Orkney.

“ The meeting taking into consideration that *a valuation-book*
 “ of the county has been for some time past required by Exchequer, and that *no cast-book of the cess has been made up*
 “ *with the names of the real possessors of the lands for time past*
 “ *the memory of man*, which has led to considerable and almost,
 “ to all appearance, even inexplicable embarrassment, and retarded the collection of a considerable proportion of the
 “ cess, and whereby the collectors have sustained personal loss,
 “ the meeting have solicited Mr Nicolson to accept the office
 “ of clerk of supply for the present year, in order that he may
 “ set about immediately *to prepare the valuation-book, agreeable*
 “ *to the instructions of the Exchequer*, and also to make up a
 “ *relative cast-book*, bearing the names of the present proprietors ; and the meeting being impressed with a sense of the
 “ absolute necessity of this measure, recommend to all gentlemen concerned to render Mr Nicolson every assistance and
 “ information in their power for enabling him to accomplish
 “ this very intricate and laborious work ; and they beg leave
 “ particularly to recommend to Exchequer to make Mr Nicolson an adequate allowance for his trouble on completing this
 “ business,” &c.

The Commissioners seem to have mistaken the orders of the Barons and their own powers. It was not a *new valuation* of the county that was ordered ; but presuming that the copy of

a book which was in Exchequer, purporting to be an authentic copy of that on the record of the county, and that the original was a genuine and complete valuation in 1653, the Barons merely ordered a *copy of it adapted to the state of property in 1802*, by the insertion of the names of the actual proprietors, or as it had been altered by particular decrees of the Commissioners, which was competent. A *new valuation* was a thing which the Barons had not power to order, nor the Commissioners to make without the authority of Parliament. And, accordingly, it will be observed that Mr David Balfour, Major Balfour, and others of the most liberal and intelligent among the Orkney freeholders, proposed to get the authority of Parliament for *rectifying* the valuation of that part of the county in the bill which was projected for giving a valuation and elective franchise to Zetland. They did not assume the Orkney valuation to be either correct or authentic, but bore testimony to the reverse, and that, moreover, the record was lost. They were willing to concede all that Zetland wanted, if only the imperfect valuation of Orkney should be corrected, so as to be *clear*, like what Zetland would get. And in addition to the original evidence on record, and the negative evidence arising from the want of the erroneous valuation roll, we have, finally, the testimony of five most respectable and well informed Orkney Commissioners of Supply, that no cast-book of the cess had been made up with the names of the real possessors of the lands for time past the memory of man; or, in other words, that the cess had been levied immemorially by some arbitrary, irregular, and unwarrantable distribution, totally unconnected with the just valuation of the lands. In these hopeless circumstances, and as far as can be discovered, without the slightest shadow of legal authority, did Mr Nicolson proceed to concoct a *new valuation* of Orkney. He bestowed much labour and time on the task; and, after the lapse of four years, he submitted the result of his labours to the Commissioners. Their proceedings thereon are thus recorded:

Kirkwall, 25th November 1809.

SEDERUNT.

“ Robert Baikie of Tankerness, Esq., Convener, Malcolm

“ Laing of Strynzie, Esq., Dr Robt. Groat of Newhall,

“ Capt. Wm. Balfour of Elwick, Geo. Traill, yor. of Holland.

“ The Commissioners of Supply having this day met in terms
 “ of adjournment of the 18th curt., Mr Nicolson again produ-
 “ ced the *cast-book* of the county, made up by him in terms
 “ of their appointment of 30th April 1805, of which *cast-book*
 “ the meeting have approved, conform to docquet subjoined
 “ thereto, and subscribed by the Commissioners present, the
 “ collector being thereby authorised to levy the cess, road, and
 “ rogue money, and collector’s additional salary for the cur-
 “ rent year ended 25th March next, and all preceding years.”

“ The meeting thereafter taking into consideration the great
 “ length of time and labour which it has cost Mr Nicolson to
 “ make up the *cast-book* now approved of, and which the meet-
 “ ing conceive to be of considerable utility to the county in se-
 “ veral other respects unconnected with the levying of the
 “ cess, &c. are of opinion that 100 guineas shall be apportion-
 “ ed and levied upon the heritors of the county of Orkney,
 “ conform to the valuation or cess payable by them respec-
 “ tively, to be paid to the said Robt. Nicolson for his trouble
 “ and expense in making up said *cast-book*,—and the Commis-
 “ sioners present decern for payment of the same accordingly,
 “ and appoint the clerk to give in a list apportioning the same,
 “ and the collector thereafter to collect the same along with
 “ the cess.”

The following docquets were annexed to the new valuation and *cast-book* thus referred to :

“ Kirkwall, 2d Dec. 1811.—“ We *the Commissioners* of Sup-
 “ ply for the county of Orkney hereto subscribing, do certify,
 “ That what is contained on the pages of this book, con-
 “ tains a just and true state of the valued rent of Orkney, a-
 “ mounting to the sum of L.56,866 and fourpence seven-
 “ twelfths of a penny Scots money, as made up by the Com-
 “ missioners for the county in the years 1653 and 67, contain-
 “ ing the names of the then proprietors ; and that what is con-
 “ tained on both inclusive, is a just and true state
 “ of the present *heritors* of Orkney, *their several valuations*, and
 “ the cess payable by them corresponding thereto, exclusive of
 “ the cess payable by Lord Dundas for the Earldom and

“ Bishopric of Orkney. In testimony whereof, we have sub-
 “ scribed these presents, place and date foresaid. (Signed)
 “ Robert Baikie, Malcolm Laing, Robert Groat, James Rid-
 “ doch. Robt. Nicolson, Clerk of Supply.”

“ Kirkwall, 2d Dec. 1811.—We the Commissioners of Sup-
 “ ply for the County of Orkney hereto subscribing, do certify,
 “ That what is contained on the thirty-one preceding pages is
 “ a just and true state of the valued rent of Orkney, amounting
 “ to the sum of L.56,866, $4\frac{7}{12}$ d. Scots money, and of the pre-
 “ sent proprietors thereof, made up agreeable to the order of
 “ the Right Honourable the Barons of Exchequer of date the
 “ 24th day of June 1802 years. In testimony whereof, we
 “ have subscribed these presents, time and place foresaid.
 “ (Signed) Robert Baikie, Malcolm Laing, Robert Groat,
 “ James Riddoch. Robert Nicolson, Clerk of Supply.”

A *new* valuation roll and relative cast-book of the cess hav-
 ing thus been made up and approved of as now detailed, a copy
 thereof was transmitted to Exchequer, and the collector pro-
 ceeded to levy cess, road, and rogue money, according to the
 new cast made by Mr Nicolson. Certificates from it as to the
 amount of valuation on various estates have been received as
 evidence by the freeholders on inrolments, and for uplifting
 valuations by the Commissioners of Supply. It was soon found,
 however, that in the collection of the cess, according to the
 new rule, great inconvenience and trouble arose to the collec-
 tor. There were numerous discrepancies betwixt the amount
 of cess demanded under the new and old casts. The particu-
 lar parcels of lands charged for against an heritor in cumulo,
 were not particularized either in the new or old book, but en-
 tered vaguely in the name of a proprietor “ his lands there,”
 i. e. in a parish, without any farther description ; so that when
 estates were either subdivided or made up of parcels from dif-
 ferent properties, the portions of valuation and cess applicable
 to those portions could not be discovered. The valuation of
 several parishes was altered in the amount, and the total of *the*
heritors valuation, which, by that of 1653, amounted (*according*
to Mr Nicolson's statement) to L.30,380, $5\frac{13}{36}$.
 was by the new book encreased to 30,865, $4\frac{28}{36}$.

By the Exchequer copy valuation 1653, the total valued rent

amounted to L.56,661, 9s. $1\frac{2}{3}$ d., while by Mr Nicolson's book it was made L.56,886, $4\frac{89}{180}$ d.

These variations, and the embarrassments which arose in collecting and settling the cess, together with the redemption by some heritors of their land tax, and the purchase of their feu-duties by others in the Earldom, (on which a consolidation arose of their separate valuation applicable to their purchased feu-duties and former properties,) all conspired to render some inquiry necessary as to the principles upon which the new book had been made up and lodged in Exchequer, and not only put into the collector's hands as his rule for levying the cess, but made the criterion of freehold and other most important rights connected with the property of the county. Mr Nicolson was applied to for explanations; and he having also gone to the Commissioners of Supply at a county meeting, and suggested some alterations and amendments upon what had been certified as correct, a committee was, of this date, (4th October 1820,) appointed to examine the latest edition of his valuation-book then exhibited, with the various explanations thereto annexed. After narrating the proceedings of the Commissioners in 1667 and 1671, as already detailed, he makes the following "Remarks," to which it is of importance to attend.*

"These proceedings evidently appear to have been copied from the minutes of the Commissioners 1667 and 1671; *but whether the originals are still in existence is not known.* The want of them lost Mr Baikie of Tankerness his election 1780. On that occasion Mr Traill of Holland claimed, was inrolled, and voted for Mr Baikie; but it having been objected that he was not possessed of L.400 valuation, and not having it in his power to instruct the contrary, owing to his not getting access to the assessment of feus 1671, which, with his valuation 1653, made out a full and legal qualification, his vote was set aside, and, in consequence, Mr Baikie lost the election. A short time thereafter this assessment made its appearance; being wanted to serve some particular purpose, it was found in one of the lower vaults of the jail, and brought out by the jailor. It evidently appeared to have been purposely thrown in a few days

* Book, p. 83.

or perhaps the night before. This purpose being served, the assessment again disappeared, and has not since been seen or heard of.*

“ This single instance *shews the propriety of ascertaining, fixing, and determining, by decree of the Commissioners of Supply, the true valuation of every proprietor.* Besides, to effect this, *if possible*, is absolutely necessary for the good government of the public affairs of the county, the valued rent being the only rule observed in the division of commonties, assessment for churches, manses, &c. *And it is only to be done by having recourse to the copies of the valuation-book 1653, and the copies of the minutes of the Commissioners 1667 and 1671, apparently the most correct. And with this view the preceding copies have been carefully collated, and the following statements made up.*” He then goes on with some remarks upon the details of the proceedings of the Commissioners in 1671, in adding to and restricting valuation; and, among other things, says, “ the cess of the Earldom and Bishopric not being upliftable in Orkney, but separately paid into Exchequer by Lord Dundas, it is not known how far the restriction as to the valuations of these properties have been regarded.” After adjusting all the additions and deductions, Mr Nicolson gives a state of what he thinks the present heritors valuation, amounting to L.30,865, $4\frac{2}{3}\frac{5}{6}$ d. instead of the sum stated as he represents in the valuation 1653, viz. L.30,380, $5\frac{1}{8}\frac{3}{6}$ d. But how far this new cumulo is warrantably made up or divided, remains to be established.

He then proceeds, “ Thus it appears, the heritors' valuation paying cess to government amounts to L.30,865, $4\frac{2}{3}\frac{5}{6}$ d. The feu-duties lately purchased from the superior will of course fall to be *deducted* from the Earldom, and placed to the heritors' accounts respectively in the valuation book *now proposed* (that is, 1820) *to be made up*; and the valuation of these feu-duties will require to be separately entered, and to remain so until the cess effeiring to them, hitherto separately paid into Exchequer, be ascertained.

† It is now, however, (*valeat quantum*,) secured, and is just now in my hands, to be deposited among the county records.

“ In parishes where the particular lands are mentioned in the valuation-book 1653, and few changes taken place, the valuation of each parcel may be got at by reference to the *copy* of the old valuation-book. But where the case is otherwise, the lands not named, heritors numerous, and many changes by succession and transference, there is no other possible way of ascertaining it but by proportioning according to the cess payable. This is evidently a fair way, although tedious in the operation, and must leave each heritor's valuation in cumulo.

“ But to obviate this evident inconveniency, those heritors *who choose* may lodge rentals, specifying the names of their lands and the amount of what *they* consider a fair medium rent for each parcel, and the cumulo valuation may be proportioned accordingly, and the decret of the Commissioners of Supply following thereon, *the same might remain as the rule in all time coming*. Was this plan generally adopted, it would prevent much confusion, and facilitate the business of the county greatly. There would be no cumulo valuations then to divide, and the extent of every one's interest would appear at first view. Even the penny lands in each town or parish might be inserted,—an information often much wanted in cases of planking or other divisions.”

“ In fixing the valued rents, the same prices were observed as a rule all over the country,—and it is to be presumed originally the same rate of cess was laid on all. *But on examining the cess-books, it appears the rates now differ widely in every parish, some paying upwards of 12 per cent., and others below it.* This should surely be rectified; and it is suggested the best way of doing so, will be to fix the rate at $12\frac{1}{4}$ per cent. over all. The addition will be very trifling, and scarcely felt; it will put all on an equal footing, and afford a small addition to the collector and clerk's salaries,” &c.

It is proper also to attend to Mr Nicolson's statements at the meeting of 4th October 1820, as they stand on the record.

“ Mr Nicolson stated, that as far back as 24th of June 1802, the Barons of Exchequer in Scotland issued an order on the county of Orkney to furnish and lodge in Exchequer a *valuation-book of the county*, made up in the names of the present heritors. That for some time it was considered almost imprac-

ticable to accomplish this with any degree of accuracy, owing to the great changes of proprietors which had taken place from the time of the general valuation in 1653, *since which period no valuation book of the county had been made up*: That the order of the Barons being frequently repeated and much pressed on the county, he, Mr Nicolson was solicited, and, by sederunt of the Commissioners of Supply, appointed on 30th of April 1805 to prepare a valuation-book: That after much inquiry, labour, and perseverance, a valuation book was got made up, agreeably to the best information and documents to which recourse could be had at the time, and the same was laid before, examined, and *certified* by the Commissioners of Supply on 2d December 1811, and was afterwards lodged in Exchequer. Since that time, however, additional information had been acquired, *which rendered some corrections necessary*; and owing to the redemption of a part of the cess or land tax, it was also found necessary to separate the cess from the collector and clerk's salaries, which *were formerly entered and charged in cumulo*: That since 1811, great changes in property had taken place in Orkney, and that Mr Nicolson had now (i. e. 4th Oct. 1820,) make up two *rectified duplicates of a new valuation-book* agreeably to those changes and the use of payment of the cess, and founded upon the old valuation book of 1653 and the proceedings of the Commissioners of re-valuation in 1671; a very distinct copy of which, apparently made by the late Mr Balfour of Trenaby, and containing various notes in his hand-writing, had been obtained by Mr Nicolson from the late Mr James Smith, who was formerly factor on the estate of Trenaby, and which was found to correspond exactly with another copy engrossed in the protocol book of James Boynd, notary-public in Kirkwall; from which circumstance, and *the long use of payment of cess* according to the adjustments of the Commissioners of re-valuation, as appearing in these two copies of their procedure, the accuracy thereof was satisfactorily established. Mr Nicolson proposed that one of the duplicates of the rectified valuation-book be lodged in Exchequer *in room of the former*, and the other kept in Orkney, for the public service of the county; and these duplicates he begged leave to lay before the Commissioners of Supply, and submitted that they should

appoint a committee to examine *the rectified valuation-book* which he has now made up, and to report thereon to the Michaelmas head-court in November next, *preparatory to a decret of approbation thereof.*

“ The meeting unanimously approved of this suggestion ; and in order that the valuation-book may be sanctioned in the most deliberate and sufficient manner, they appoint the convener, Mr Polxfen, Mr Peterkin, Lieut. John Baikie, and Capt. Balfour of Elwick as a committee, any three to be a quorum, and Mr Peterkin to be convener, to examine the old and rectified valuation books ; to consider the evidence upon which Mr Nicolson has introduced his corrections thereon ; to ascertain the accuracy of the principles and calculations whereon he has proceeded, and to lodge a report of the result of this examination in the clerks hand within fourteen days ; with certification, that if no objections are made thereto between and the meeting of the Michaelmas head-court, the report will be then approven of. The clerk is also appointed to write a circular letter to all the freeholders of the county, informing them of this remit ; and, farther, appoint the valuation-books to be lodged in the office of the collector of cess whenever the report of the committee is prepared, for the consideration of all who are interested.”

Some members of the committee, and the collectors, held various meetings with Mr Nicolson ; and the result was a report to a general meeting of Commissioners, on 13th April 1821, in the following terms :

“ The Sheriff-substitute, as convener of a committee appointed to examine the valuation-books made up by Mr R. Nicolson, stated, that some members of the committee had held several communings on the subject ; but that, from a variety of difficulties attending the business, they did not consider themselves warranted to report that the Commissioners of Supply could with propriety sanction at present, as perfectly accurate, either the first or the corrected book made up by Mr Nicolson, although perhaps, on farther examination, it may deserve the fullest approbation for accuracy, as well as for the industry which he has bestowed on it. They find it is adapted to the present state of possession, chiefly by *assuming*

the cess paid for some time past as a rule for ascertaining the valuation which each estate *ought* to bear; and this is stated to be checked by reference to *copies* of the valuation-book in 1653, and contain additions made thereto sometime after, being *additional* valuation on some feued lands, and *abatements* made on others, by which the original valuation-book was considerably altered. The original valuation-book, and also the sederunt book of the Commissioners, in which the alterations are understood to be recorded, have both been abstracted from the keepings of the county, and are now missing; and it is only from *copies* of the book, and minutes which have been preserved, that the circumstances of the case are now known. It does not appear, however, that these copies can be assumed, without some corroborating evidence, as *authentic*, or as the basis of any new book exhibiting the present state of the valuation of the county. In these circumstances it is suggested, that before any act of approbation be passed sanctioning Mr Nicolson's corrected book, Mr Bain be instructed to apply, in name of the Commissioners, for inspection of the old copy of the valuation-book 1653, which is understood to be in the Exchequer: 2dly, To recover by all competent means, if recoverable, the original record of the county Commissioners, which contains the minutes anent the alterations on the valuation-book, and which Mr Nicolson states he last saw in the hands of Mr Riddoch and Colonel Balfour: 3dly, To take the opinion of counsel as to the proper method of now authenticating the old valuation book, and whether or not the alterations thereon were competent, and what effect should be given thereto: And, lastly, what is the competent method of now proceeding to adapt the valuation to the present state of property? These previous steps being taken, a full meeting of all the Freeholders and Commissioners of Supply should be called, to consider the state of the valuation of this county."

Since making this report the committee has done nothing, and the business has slumbered in the county meetings. Having, however, in summer 1821, inspected the copy of the valuation book 1653, which is in the office of the presenter of signatures at Exchequer, I found it to be certified, as already mentioned, in the year 1751, by two commissioners and the clerk, as a true

copy. It has all the appearance of being a correct copy ; but the additions, deductions, and alterations adopted by Mr Nicolson, upon the authority of the proceedings in and prior to 1671, are not introduced into it ; so that it may be fairly concluded, that, up to the year 1751, those alterations on the original book were not practically held to have been authoritatively made, and were not acted upon. I have recently (Jan. 1822) found the original record of the Commissioners and county gentlemen from 1660 downwards, in the hands of Mr Alexander Stevenson, writer in Edinburgh, who succeeded the late Mr David Balfour as agent for many of the Orkney heritors ; and having examined the proceedings of the Commissioners on the valuation-book, I found the minutes already quoted regularly entered in that county register. One of the difficulties attending this case is now therefore removed ; for although the original valuation book was purloined to serve some political job, and is perhaps still concealed from ignorance or design, its want is the less to be regretted, as the authenticated copy 1751 is in existence, and, in conjunction with the original record of the subsequent proceedings, furnishes materials for *an inquiry* into its validity and effect in the existing circumstances of the stewartry.

Having thus stated all the facts which I have been able to discover with respect to the state of the valuation of Orkney and Zetland, I shall perhaps be excused for making a few observations on the subject, not with the view of obtruding any dogmas of my own upon the county gentlemen, but simply as hints for the adoption of such measures as may set the matter upon some clear and settled foundation, and lead to some useful practical results.

It is not merely for political purposes that a fair and correct valuation is desirable. It is the rule by which most of the burdens on landed property are divided ; and the inconvenience which arises both to Orkney and Zetland at present, I believe to be very great in consequence of the want of it. In Orkney I know that, for almost all the real purposes of a valuation, the present arrangement, for I do not think it is a valuation, is utterly inefficient. The cess is unequally distributed. The ministers stipends being paid by the Crown and Bishops, when

the old valuation was attempted to be made up, formed deductions from their rental and valuation; but the case is now altered, and the heritors are, for the present at least, burdened with the stipends; so that the deductions ought to be adapted to the fact. The valuations on feu-duties and on rents are not clearly distinguished. Many persons in the Earldom have bought their feu-duties; the valuations corresponding to these fall therefore to be taken from the donatory's valuation and added to the heritors. There are lands paying no cess, and in the valuation and cast-book are the names of heritors who have been in their graves many years, and whose properties are split up, or conjoined with other lands, so as to make the whole concern, as far as it is intelligible, a mere mockery of a valuation-book. So defective is the evidence of valued rent, that, although the statutory rule for dividing commonties, it cannot be adopted in Orkney for that purpose, and different principles of division are resorted to. In short, it needs rectification *in toto*.

I am very far, indeed, from underating Mr Nicolson's labours, and only regret that, having proceeded on erroneous principles, they have been lost. He has taken the cess paid as the basis of his calculations. This would be a very competent method if the usage were bottomed on any thing which afforded a fair presumption that it was originally imposed justly and fairly, and if it had been quite uniform and acquiesced in for a long tract of time. But there is very satisfactory evidence that, from the beginning, the payment of cess founded on the valuation 1653 and amendments 1671, were only intended to be of a temporary nature, until it should be rectified by a new valuation: And in later times we have the very weighty testimony of Mr David Balfour, that it has become impossible to ascertain the valued rent of many lands in Orkney;—of his brother, that it had defects which required remedy;—and the very strong and striking declaration by the Commissioners in 1805, who authorised the rectified scheme, “*that no cast-book of the cess has been made up with the names of the real possessors of the lands for time past the memory of man.*” How a usage of payment, so precarious as that it was “involved in inexplicable embarrassment,”—that a “considerable proportion of the cess” was

uncollected,—and that the collectors in consequence had sustained considerable loss,—should be taken as a solid basis for a new arrangement of the valuation, I cannot conceive. And accordingly it has been proved, by the result, to be unsound. The newly constructed book, and cast for collection, was found so imperfect, that the collector did not begin to levy the cess under it for six years,—and after he began, he found so many inaccuracies, that it produced incredible trouble and vexation. Finally, Mr Nicolson comes forward, after the lapse of nine years, and states to the county, that although the book made up previous to 2d Dec. 1811 was then *certified*, yet he had since acquired some information which “*rendered some corrections necessary*.” Upon this, he produces “rectified duplicates of a new valuation book,”—and suggests the propriety of a decret of approbation by the Commissioners of Supply.—And at the same rate, instead of having an authentic and standard valuation book, the Commissioners of Supply may be called on every five or ten years to make up a new valuation for the county,—the former having been found inaccurate or insufficient. Such a state of things is a very serious evil, affecting every landholder in the district, and exposing many of their rights to challenge and uncertainty. The committee have therefore paused; and, as one of their number, I cannot recommend to the Commissioners of Supply to pass a decret of approbation of the rectified duplicates now proposed to be adopted.

In the first place, I am humbly of opinion that it is *ultra vires* in Commissioners of Supply, since the year 1671, to make a new valuation (without the authority of Parliament,) by rectifying valuations made prior to that year. They have power to split particular cumulo valuations then ascertained,—or to add together separate valuations since accumulated, upon the application of parties concerned; but that they can sit down and direct their clerk to make up a new valuation of the whole county, or give authority to such a work, and amendments upon it, without the sanction of Parliament, and all parties interested being in the field,—I have never seen any reason to suppose. The new book of 1811 has the original defect of the one in 1653, that it does not specify the *lands*, and that it requires

amendments,—and the power of amending its original imperfection is not vested at present in the Commissioners of Supply for the county, or any clerk to be named by them, but in the Legislature. I am confirmed in this opinion by those of Mr David and Col. Balfour, two gentlemen of the best talents and information, and who knew well both the defects in the Orkney valuation and the remedy. Mr David Balfour proposed that a clause should be put into the bill for Zetland “*authorising* the Commissioners of Supply in Orkney, or any five of them, to ascertain what lands each article in the valuation-book is applicable to, and declaring their decret to be final if not objected to within six months.” It does not, however, appear, that it is incumbent on the Zetland heritors to provide this remedy. The heritors of Orkney should seek it; and probably the wisest and most liberal course would be to adopt that proposed by Mr David Balfour in the year 1794, to get an act of Parliament, authorising the Commissioners of Supply in both parts of the county to establish a genuine and clear valuation of every parcel of land in the county. This was the spirit of his proposal, accompanied with admissibility into the roll of freeholders, of every Zetland gentleman who should thereupon be qualified to vote in terms of law for a knight of the shire.

2dly, The principle upon which the new and rectified books are made up is objectionable, even although the jurisdiction of the Commissioners were quite competent. The adoption of it would be merely perpetuating that which in time past has been found so inconvenient and troublesome. It is the valuation of the *lands*, not of any particular heritor's estate, which forms the proper entry in a valuation-book; and the annual casts founded thereon, and decreets, on applications, to split and accumulate, will indicate the existing proprietors names at all times. Instead, therefore, of stating, that “A B, his lands in the parish of C,” are valued at L.100, &c. the valuation-books should bear, that the *town* of D, being an 18, 9, or 6 penny land, pays in cumulo a certain sum, which, subdivided, is so much per penny land, mark, or cowsworth; and in like manner, the *towns* of E, F, G, and H, in the same parish, are valued at specific sums; thus exhibiting a permanent

record of the value of every parcel of land in the county, and every proportional subdivision thereof. By collecting each heritor's several lands or proportions, the amount of his valuation, and corresponding cess, payable for every spot of an estate, however split or varied by transfers, would, at all future times, be merely a matter of arithmetic and comparison with the fundamental valuation of *the lands*; and the Commissioners, in giving out decreets of division, &c. would have a clear and correct standard before them, and would require no new proofs on every change of the real rents in order to new-model valuations belonging to individuals. There would be a good deal of mere labour, but no difficulty in making up a satisfactory valuation-book on this principle. The payment of cess, it is evident, cannot, in the circumstances of the case, furnish a correct basis for the operation of amendment, nor is the old valuation of any visible use. The real rents, therefore, should be resorted to. And the total real rents of each *town* being established by proof, and the proportions on each subdivision settled, the valued rent thereof could be easily apportioned among the different heritors in that town,—the total valuation of the county being as a preliminary distinctly agreed on and settled.

There are some objections, perhaps, to this plan, of which I am not aware. Some of the heritors have redeemed their cess, and others are inrolled as freeholders on the supposititious valuation, which has been fully shewn to be incomplete, unauthenticated, and adopted without legal authority. Whatever has been done already on the faith of that valuation should not be disturbed. Those who have redeemed their cess are not interested on that score; but for all other purposes the valuation is to them as important and as inefficient as to any others; and any change on the valuation, by correcting its defects, can have no retrospect so as to affect the votes of those who are *already* on the roll. That it may operate in future to change the qualifications of voters is nothing to the purpose. Sales and splittings, &c. would have the same effect; and no just man, whatever be his local politics, can have any well grounded objection to the attainment of an equal and clear valuation for the whole stewartry of Orkney and Zetland.

I have thus, I trust, acquitted myself of my task as a member of the Committee to inquire into the state of the valuation of Orkney. These remarks on the political state of the county were begun as mere jottings for a report, but the minute details have extended them far beyond the original object. Besides, I am not sure that my colleagues would concur in the views I have given, or take the trouble which I have done, to look into the matter particularly. Some of my friends may not, perhaps, thank me for these statements; but I did not look for such a thing, and in this particular it is impossible I should be disappointed. I have only to say, that I have been induced to give publicity to these pages, because I think all the landholders in Orkney and Zetland ought to know the true state of matters, and because I have an extreme dislike to the mystery and concealment of public documents, which seems to have been long the fashion in one part at least of the stewartry. *

20th June 1822.

* The most obvious method of remedying the evils connected with the valuation and unfair representation in this shire seems to be, that the landholders of both clusters of the islands should *concur* in an application to Parliament for a new valuation of the whole shire. If this is not acceded to by all parties, it may be competent, perhaps, for the Zetland gentlemen to bring a declarator in the Supreme Court, to have it found that Orkney and Zetland are one shire, and that there is no complete valuation of the shire, in respect of the errors which have been pointed out, and especially of one third of the county having been omitted in the attempts to concoct a valuation roll. With a decree to that effect, they would be entitled to go to the Legislature for an act to get a correct valuation; and, in order to prevent any more enrolments as freeholders (and there many in agitation) upon the *fictitious* valuation which has been heretofore acted on in Orkney, it might probably be competent for the Zetland landholders to crave from the Court of Session an interdict against any enrolments being collusively made by the Orkney proprietors during the dependence of the declarator and consequent procedure in Parliament; for it is *impossible* at this moment that any single heritor in Orkney can obtain a legitimate certificate from the Clerk of Supply, extracted from a *genuine* valuation book, that he has valuation sufficient to authorise enrolment as a freeholder. That the exclusion of the Zetland landholders from the right of voting in the choice of a representative for the shire of which they are a part, is absurd and unjust, cannot be denied: and that the want of a correct valuation for the whole shire is an evil, is equally plain. A remedy for such evils must exist,—and it is for those interested, if they be inclined, to seek it.

NOTICES

OF

GOW THE PIRATE.

ARE Exact Double of **CORRESPONDENCE-LETTERS** wrote betwixt **JAMES FEA**, younger of Clestran, and **JOHN GOW**,* alias **SMITH**, Commander of ane Pyrate Ship about two hundred Tons burden and twentie-four mounted Guns, or thereby, and a true Journall of the Method of the said **JAMES FEA**'s taking the said Ship and Crew.

Imprs.—Upon the surprising arrivall of this notorious pyrate to the entrie of the port of Calfsound. the following letter was wrote by the said James Fea, to be sent on board. Meantime, the ship having touched ground in her turning up, they sent on shoar ther boat, craving assistance to sett outt their anchor to warp of; and itt not being thought proper to send a boat to them with the letter, James Laing, merchant in Carrick, was sent on board yr.wt. in the pyrate's own boat. A copy of the letter followeth:

* The following documents appear in the Register of Infeftments for Orkney and Zetland: "Sasine, dated 28th July 1716, in favour of William Gow, merchant in Stromness, of ane piece of wast ground lying on the shoar of Hammigar, upon the neck of the poynt called Romesness, in the parish of Stromness, on a disposition by Marjory Gordon, spouse to Archibald Gibsone of Hammiger;" and sasine, dated same day, in favour of "Margaret Calder, spouse to William Gow, merchant in Stromness, and John Gow, their eldest lawful sone in life," of the same piece of ground "formerly called Ramesness, now called Gowsness, with a new house built by the said William Gow "yrupoa."

*Carrick, Saturday, 13th,
10 Mattin of the cloack, Feb. 1725.*

Sir —I have sent this bearer on board, intreating that, upon old acquaintance, you'll be pleased to forbear the usual compliment of a salutation, because of my wife's indisposition. Had she been well, I had come on board myself. All the inhabitants of this place have fled to the hills because of the bad reports yt. your enemies have reported of you thro' this coun-
tre, qch. I hope is groundless, and non would adventure to come onboard of you butt this bearer, whom I hope you'll re-
turn as soon as possible ; for by his return the people may be willing to assist you, if need be, and you shall not want my as-
sistance, so far as honour can allow me. No more, but that I am your old school commerad.

(*Sic subscribitur*) JAMES FEA.

This is the exact substance of the letter sent on board, but had not time to transcribe it verbatim. Wrote in presence of James Traill of Westove. Mr John Fea, son to James Fea, elder of Clestran, and the said James Laing.

(Signed) J. Trail, witness.

James Laing, witness.

At twelve of the cloack the said day the answer returned to the foresaid letter by the said Captain John Gow, to whom it was directed, the said James Laing being put on shoar again with their boat, which immediately returned to the ship again, was, that he would write non to any, butt to acquaint Clestran yt. if he would persuade his people to assist him and give him the use of boats, he would give him a most generous compli-
ment, and desired that they should come on board presently ; butt Clestran thought fit to delay the same till further advice : meantime they returned their boat with five armed men, qch Clestran seeing coming, ordered his bigg boat to be broke and launched to the sea, and the oars taken from all the small boats. When the pyrates landed they left their boat at a dis-
tance, under cover of their cannon, and marched with their armes towards the manner place. Clestran having gone out to meet them, earnestly desired them not to approach his house after such a hostile manner, because of his wife's indisposition ; they threatening to take of his boats, told them he could not be

answerable to give ym.; meantime he desired them to drink a bottle of ale in one of the change-houses; and having ordered to secure their boat, betwixt six and seven o'clock in the evening, by himself and servants, saized upon them all and disarmed and bound them, and transmitted them to the other end of the island to be kept in strong waird. Att eight o'clock in the evening said day, the said James Fea of Clestran dispatched expresses thro' all the neighbouring islands, discharging any boat to come within shote of his guns, and craving the neighbouring gentlemen's assistance.

Sunday, fourteenth February, being a stormy day the said James Fea supposed the ship had been wrectet and bilged at night, ordered that a fire should be kept on all the promontaries of the island, and, upon Monday morning, sent a boat and six armed men to the holm qr. the ship lay, with a letter to the said commander, qrf. the following is the exact double, the principal being wrote in presence of the under subscribers.

Carrick, 15th February, 10 of the cloack mattin, 1725.

Sir,—Upon Saturday, contrair to my proposed friendship, five of your men having come on shoar armed, did after a most hostile manner threaten all the inhabitants in this place, and did begin to committ roites; therefore all the people returned and raise in arms, and two of your men made great resistance; but, by the providence of God Almighty, they were overcome and carried off prisoners for Kirkwall; these three that did not so much resist confessed that the boatswain was the man that carried the women on board and plundered Grahamsay's house. The collector ordered me, if you came heir, to set the promontorie on fire for a signall to the friggats yt. are sent for to catch you; they'll certainly be here to-morrow or the nixt day. I therefore, for the regaird I have to your father's son, being heartily sorry for you that ever you should be so ingadged with such a crew, desire you to come on shoar, and believe you may expect better entertainment from me than any other; for if you doe surrender you can be evidence against the rest, and I'll doe my best to make all for your advantage that in honour you can imagin. If you have any friend with you, take him alongst with you, and if you do not resolve to come presently send me

word. Take this as a friendly caution, and if you take not my advice you'll certainly repent it. This in friendship from

(*Sic subscribitur*) JAMES FEA.

James Laing, witness.

Ja. Fea, witness.

Wm. Scollay.

Ja. Traill, witness,

Jer. Dinnison, witness.

The bearer of Clestran's letter, William Scollay, shipmaster, received a letter from Gow to Clestran, qch was wrote and delivered to the said William Scollay to be carried to Clestran; but the said Wm. Scollay delivered the above before he returned to Clestran with the following, as will appear by the principall:

Hond. Sir,—According to your promise, I expected James Laing with boats and men to my assistance; but have neither seen nor heard of him since his being onboard. I sent my boat ashoar to beg your assistance; if they have done oyrwayes, is contrair to my orders. I earnestly desire you'll send me some boats to assist me. If your people are afraid, I'll come on shoar myself till they return. If you have a great boat, would be usefull for taking in the best of my cargo to lighten the ship. If you'll grant me your assistance, I hereby oblidge myself to pay you to the value of one thousand pound Sterling; qch if it be my misfortune to be shipwrecked, the Government seizes all; and I'll take care they shall be nothing the better—only the guns; for I'm resolved to set fire to all, and all of us perish together. Therefore begs you'll advise your own advantage, together with my safety. Your men shall have twentypence a-day for every day they assist me. I am, hond. Sir, your humble servant, (*Sic subscribitur*)

JNO. GOW SMITH.

The above letter was received about twelve o'clock this 15 Feby; and comunicated to us undersubscribers,

Wm. Scollay, James Laing, witness.

Ja. Fea, witness.

Ja. Traill, witness.

Jer. Dinnison, witness.

*Double of an Answer to the above Letter.**Carrick, Munday, 15th, 2 of the clock, P. M. Feb. 1725.*

S — I doe beleive mine to you four hours ago will satisfie why James Laing returned not to you, and qt. is become of your men; and I am sorry that under a flag of truce your men should be so foolish as provok my men wt. armes; and had it not been upon your accountt, and the discreet orders I gave the commander of the boat, they had certainley shote your two men. My men would not go without armes; I told you my advice in my last.

I have a salt boat here about two lasts burden: your men threatening to take her away without agreeing for freight, in case they should overcome us, ordered my men to break a plank in her, which is soon helped. I desire, therefore, you make no dellay, but come straight on shoar yourself, and take noe more with you but your carpenter to help her; you may understand what I mean. Take noe arms wt. you, and let nott a man follow you out of the ship, save your carpenter, if you have one. I am glad I know your hand of write, else I would not answer this letter under the name of Smith. I am well pleased you wrote me. I dare not sett my hand to more than him whom you know, (*Sic subscribitur*) JAMES FEA.

James Laing, witness.

Ja. Fea, witness.

Wm Scollay,

Ja. Traill, witness.

Jer. Deinnison, witness.

Double of an Answer to the above Letter, not dated, sent about half three in the afternoon this day.

Honrd. Sir,—I am sorry to hear of the irregular proceedings of my men. I gave noe orders to that effect, and what hath been wrongously done to the country was contrarie to my inclination. It is my misfortune to be in this condition at present. It was in your power to done oyrwayes, in makeing my fortune better since my being in the country. I have wronged noe man, nor taken any thing but what I have paid for. My design in coming was to make the country the better, qch I am still

capable to doe, providing you are just to me. I thank you for the concern you have for my bad fortune, and am sorry I cannot imbrace your proposal as being evidence; my people have already made use of that advantage. I have by my last signified my design of proceeding, provided I can procure noe better terms. Please send James Laing on board to continue till my return. I should be glad to have the good fortune to commune with you upon that subject. I beg you'll please assist me with a boat, and be assured I doe noe man harm were it in my power, as I am now at your mercie. I cannot surrender myself prisoner: I'd rather commit myself to the mercie of the seas; so yt. if you'd incline to contribute to my escape, shall leave you ship and cargoe att your disposal. I continue, earnestly begging your assistance, honoured Sir,

Yours to command,

(*Sic subscribitur*)

JAS. GOW SMITH.

Ja. Fea, witness.

James Laing, witness. Wm. Scollay. Jas. Trail, witness.

Jer. Dinnison, witness.

Double of another Letter wrote in further Answer to Clestran's Letter, upon the supposition that Clestran was to aid him. Clestran received the same about 4 o'clock this day, the tenor whereof followeth verbatim:

Honoured Sir,—Yours I received, and am glad you are inclined to assist me to gett the ship of, qch will contribute more to your advantage than if we were shipwreckt. Qt I promised in my first shall be performed, (so help me God.) I et your people com onboard, they shall meet with good usuage, and let them carry noe arms. If I have the misfortune to lose the ship, expect you'll asist me with a boat to further my escape. I'll pay you readie cash to the value. Being in heast, H. S. yours to command,

(*Sic subscribitur*)

JNO. GOW SMITH.

This, and his other letters, are directed thus: To the honoured Mr James Fea of Clestran. The principall of the above was likeways received and communicate in presence of us.

James Laing, witness.

Ja, Trail, witness.

Wm. Scollay.

Ja. Fea, witness.

Jer. Dennieson.

About five o'clock in the evening this said 16th of February the said Clestran called on board with his speaking trumpet from the island to the ship; desired the captain to come from from his ship a good distance upon that uninhabited island, where she was next adjacent, qch he might do upon a floatt of timber, and Clestran would come there and converse with him. The answer made was to come accordingly. Clestran went wt 6 armed men to the island, butt the captain thought it not conveniet to come, only to send a servant with the two following letters, one to himself and another to his spouse. The letter to himself is as follows: viz.

From on board our Ship Revenge, Feb 16, 1725.

Honoured Sir,—With impatience I wait your inclinations qt. your determined to do as to my assistance with boats, or a great boat, to transport myself to another place to the main, where I shall be among my friends. I am not inclined to come onshoar without James Laing come on board to continue till my return, and I am sensible your place afoards the best carpenters that's in the country; therefore, if you design to serve me, sett carpenters to work to repair and send the boat on-board wt. mast and saill, and small anchor fitt for her. I am resolved (rather) to trust to the mercie of the seas as surrender prisoner at discretion. If the ships of war arrives heir before I can make my escape, am resolved to make qt. defence I can, and afterward sett fire to the hold, which will soon seize the upperpart, together with us; and as we have lived soe wee die, qch will be the loss of some thousand pounds, and non the betur: Therefore, if you'll think of the advantage and honour of taking such a ship, and if you have any regard to my safety, assist me with a good boat. I'll promise to leave the ship and cargo entire, only some provisions to our subsis-

tence. I beg your positive answer as soon as possible. I continue yours to command,

(*Sic subscribitur*) JNO GOW SMITH.

Your people are afraid to come } Directed thus: To the Honrd
nigh the ship, oyrways would } Mr Jas. Fea of Clestran
send you a present ashoar.

The Letter to Clestran's Lady verbatim as follows.

Feb. 16, 1725.

Madam,—I presume, as being a countryman, to make known my unfortunate condition at present: I have begged Clestran's assistance, qch I am not like to procure without your goodness is pleased to sollicite in my behalf, qch I earnestly begg. We are all resolved to die together, happen what will, and my death will be but little satisfaction to any; for I begg it of your ladyship, hoping to live to make the countrey the better of me. Please receive a chinch gown, which is made up only for clearing the duty, which I am hopeful you'll please accept, as being from a countryman. Hoping your goodness will pardon qrin I have done amiss, I am, Madam,

Your Ladyship's most humble Servt,

(*sic Subr.*) JNO. GOW SMITH.

The above letters were communicated to us,

James Laing, witness.

Wm. Scollay.

Ja. Fea,

Ja. Trail, witness.

Jer. Dennison.

It being late at night, and the said James Fea not having convenience to write from that island, differed till the next morning; qch time, contrary to Clestran's expectation, the said Captain came, and a man carrying a white flagg with him, to the place appointed; upon qch Clestran sent off a boat with the following letter, and enjoined his trustees, whom he sent with the said boat, viz. James Fea of Whitehall, and the foresaid Wm. Scollay, if they should come within reach of him, to bring him on shore either dead or alive; but, contrair to Clestran's orders, the said Mr Scollay went to the ship with the said Cap-

tain, there to remain as hostage for him till he the said captain was returned, which Clestran perceiving from the island, went straight to the holm, and waited the captain's return from the ship, who accordingly came to the usual part appointed; and Clestran having there met him, told him he was his prisoner: His answer was, that itt ought not to be soe, because there was an hostage for him: Clestran's answer was, that he durst nott be answerable to allow hostage for him; and since Mr Scollay had gone contrair to his orders, lett him take his fate; and Clestran ordered the bearer of the flagg, as he would expect his favour, and likeways enjoined Mr Gow Smith, as he would think to be discreetly dealt with, to agree that the said bearer of the flagg should immediately return to the ship, and desire Mr Scollay, and the two most murderous villains onboard, namely Jan Winters and Jan Peiterson, to come to the captain. Meantime Clestran asked the said James Fea of Whitehall why he had not delivered his letter sent by him to the said Mr Gow Smith, and desired him to deliver the same, whereof the following is an exact copy.

17th, 8 of the clock, Mattin,

Sir,—I received yours from on board the *Revenge*, dated 16th instant, 1725. I am surprised that a youth of your education should not have better manners than to challenge me upon a lye. You confidently assert what I have already refused, that they are carpenters here: Your informer is certainly a rogue. What I meant by your coming on shore with your carpenter, you have taken in a wrong sense. You desire James Laing to come on board; but if he would goe I dare not give hostage to you: I thought you had more sense than write after such a stile. I am sorry I ever wrote you; but I thought you had been such a man as a boy. I pray you seriously consider qt a thing it is to burn everlastingly: I pray you repent, and amend, and by soe doing you'll get a sight of your folly, and turn unto the Lord, for he will have mercie, and takes no delight in the death of a sinner. He is certainly a mad man that would nott wish for the longes life, and evite the severest torments; and if you and crew would take a serious prospect of the blessed state of those who expect forgiveness by the merits

of a crucified Saviour, you would not despair, but repent and expect forgiveness; which certainly you'll get, if you heartily and faithfully doe. You wrote my wife, and offered her a compliment; wch she did not want, and returned. However, she condoles your condition, and wishes you forever to doe well, and repent: I am a well wisher of all good men, and will be to you if you amend. This is the last you may expect from me.

(*Sic subscribitur*) JAMES FEA.

You'll be a prize this night or nixt day to those that will treat you more harshly.

After he had read the above letter, and conversed for some time, Mr Scollay returned, and these men with him; and upon their approach their commander asked them how they came to leave the ship, and desired them to return; but Clestran ordered his men to gripp them, and carry them to the boat. The Captain was desired by Whitehall to deliver his sword to Clestran, and surrender himself prisoner; but he answered, that was what he would not do to any, he having vowed the contrarie. Upon which Clestran took his sword from him, and told him he was his prisoner; and Mr Gow Smith desired as a favour that Clestran would order his men to shoot him, as he had several times requested at their communing; but Clestran not regarding, desired him to walke to the boate, butt would not till he was forced. They having come on shoar, the said James Fea ordered the Capt. to call on board with ane speaking trumpet, desiring the carpenter, and another hand with him, to come from the ship, in order to beat and repair the boat, to which the crew complied. Clestran thought proper to go to the holm himself to receive him. And when they met, the carpenter having neglected to take some necessars with him for the boat's reparation, to remove the crew's suspicion, sent him back to the ship, in order to bring along-t with him what he wanted; and about two of the cloack said day they returned to the island, and Clestran ordered some signs to be made of beating the boat in their view; and about five o'clock, Clestran ordered the Captain to write a letter to his crew, desiring them all on shoar, and showing them that the boat was ready, but that Clestran would not give her until such

time as they all came from the ship, and that his people had possession of her, for fear that they should return to the ship again. They all complied with this; but they thought it proper, before they left the ship, to open the common chest, and divide the stock-purse amongst themselves; in which, as the Captain says, there was about fiftie pounds Sterling money and gold, which was very much imbazled, (notwithstanding of a very narrow search,) because of the night and the great confusion in apprehending them.

After they were all taken prisoners, Clestran immediately went onboard, and took possession of the ship; and for fear of a train to the pouthers-room, because of their threatning to burn her, ordered a very narrow search immediately to be made to extinguish the same, in case there had been any such. And having found none, and about 11 of the clock, Clestran went on shoar in order to see the prisoners well secured, and to wait on some of his friends who came to his assistance, having left his brother, Mr John Fea, with some other trustees, to keep possession of the ship, and to prevent imbazlements. Nixt day, being the 18th instant, Clestran went on board and several of his friends alongst with him, to congratulate his success, and to witness his possession. The late commander, Mr Gow Smith, was brought alongst with them, who, in presence of these honourable gentlemen, viz. Sir James Stewart of Burray, Barronnate, Captain Archibald Drumand, Robert Stewart, eldest lawful son to Robert Stewart of Eday, William Fea of Milnfield, James Fea of Whitehall, Mr Archibald Pitcairne, merchant, Mr Francis Wilson, comptroller of the Customs, Mr Thomas Baikie, land-waiter, James Traill of Westove, and several oys, declared that the said Clestran was the man whose prisoner he was, and wished the said Clestran an happy enjoyment of the said ship, and more contentment than ever he had into her. Whereupon the said James Fea took instruments in the hands of Alex. Mowate, nottar-publict, craveing the benefite of the law made anent apprehending of pyrates may be extended to him because of the reasons foresaid. And at the same time the said Mr Gow Smith declaired that there was several wine pipes blown ready for making a float of, which they designed to sett out their anchor with, and to place two pieces of cannon there-

upon for their defence, which he declaired they would have done yesternight, it being fair weather, had they not been catcht, which appeared to be certainly true, because the casks and timber for the float were aloangst side and upon deck in view of the foresaid company, and the ships oars readie for rowing it off; and had that been done, the ship and crew had gone to sea, because of the high tide and fair wind which happened that night and next day.

Carrick, 18th February 1725.—The foresaid 14 pages contain the exact method of the said James Fea of Clestran his apprehending and taking the said crew and ship, we subscribers having witnessed the same. Witness our hands, date above-written.

Ja. Traill, witness.

Wm. Scollay, witness.

Ja. Fea, witness.

We also the forenamed persons witnessed the said James Fea's possession of the said ship, and her late commander Mr Gow Smith's owning himself Clestran's prisoner, and the instrument taken by Clestran thereanent as aforesaid. Witness our hands,

FRANS. WILSON.

Miss Betty Moodie's Letter to Mr James Fea of Clestran.

Sir,—I wish you good success and prosperity in your affairs, and shall be glade to hear that the rewards given you may be suitable to the merit of the action, so that you may be encouraged to go on in the straight pathes of virtue and untented honesty, which only leads to honour hear, and eternal happiness hearafter; that only can give peace at the last, when all other politickes will be of no use. I am sorry that som of our countray are like to com to truble by that miserable man Gow; I wish the inosant may not be made to sufer, whill the gulty is lick to go free. There is severall informations given hear, both publick and privit, that there was letters found with Gou, which made som discovery of the correspondence held betwixt him and a sertan lady and her accomplices. Sir, I hope, 'if there be any such letters in your custody, or whatever confession Gow hess made you on that particular, you will favour me with an account of it, which, upon the faith and honour of a Christian, you shall not be known or seen in it: You know how I and my

concerns are oppress'd ; yea, and our wholl contray defamed and abused by that most wicked set of peopell, which have set themselves in oposition to the common intrest and quiet of all the contray. If you be obliged to give op what papers wer found, if ther be any such letors, youl secure them, so as extracts may be got of them, wher of I hop youl precure me on, which will singularly oblige, Sir,

Ed. April 22.

Your sincere friend and most h. S.

1725.

(Sign'd)

ELIZ. MOODIE.

Sir I hop you'll favour me with a spedy answer.

Mr Fea's Answer.

Madam,—I am honoured wt yours of the 22d instant, qrb by you are pleased to bestow your benevolent wishes towards extensive rewards for me, which your goodness is pleased to think I merite for apprehending the pyrate Gow. I hope, since Providence was pleased to make me the instrumat in this action for the public good, it will sœ progressively detail the affair to my advantage as make me be thankful to the Fountain of all Goodness, and render you and the rest of my friends the satisfaction of seeing me suitably rewarded.

I am sorry to understand that any more of the innocent be brought to trouble in this affair, and equally so that fame should have blotted any of your fair and fine (though begging pardon to say) revengeful sex with the guilt of ——— correspondence, which, if I could have made appear any manner of way, you may be assured, had shee been my moyr or sister, you should not only been satisfied of your private demands, but I should have long ere now prostratt her to the public claim of justice.

I have delivered upon oath all the papers come to my knowledge of that ship, where amongst they are non at all of any lady's of my acquaintance ; and, I am glade I can say, as few of any other person that can prejudge them.

If that obdurate and miserable man should hereafter confess any such intrigue, you shall be timously acquainted thereof by,

Madam,

London, 4th May.

Your mo. obt Servt.

JAMES FEA.

APPENDIX.

...the ... of the ...
...the ... of the ...
...the ... of the ...
...the ... of the ...
...the ... of the ...
...the ... of the ...

Yours faithfully,
John Ruskin

My dear Sir,

I have just received your letter of the 10th inst. and am
glad to hear that you are interested in the subject of
the ... of the ...
...the ... of the ...
...the ... of the ...

APPENDIX

The following is a list of the names of the persons who
have been named in the letters of the 10th inst.

I have just received your letter of the 10th inst. and am
glad to hear that you are interested in the subject of
the ... of the ...
...the ... of the ...
...the ... of the ...

I have just received your letter of the 10th inst. and am
glad to hear that you are interested in the subject of
the ... of the ...
...the ... of the ...
...the ... of the ...

If you have any further information to send me, please
send it to me at the above address.

Yours faithfully,

John Ruskin

London, 10th May

Yours faithfully,

I have just received your letter of the 10th inst. and am
glad to hear that you are interested in the subject of
the ... of the ...
...the ... of the ...
...the ... of the ...

APPENDIX.

No. I.

COPIES of, and EXTRACTS from, Oldest Charters in ORKNEY and ZETLAND.

1. CHARTER by WILLIAM Earl of CAITHNESS to DAVID SINCLAIR, 1498.

OMNIBUS hanc chartam visuris vel audituris nos Willielmum comitem Catherensem, Oliverum St Clair de Rosline, militem; Magistrum Alexandrum Sinclair, Georgium Sinclare, Robertum Sinclare, Arthurum Sinclare, Elenoram Sinclare, Comitissam de Athole, Elizabetham Sinclare, Dominam de Ilaiston, Margaretam Sinclare, Dominam de Duomoutuo, Catharinam Sinclair, Euphamiam Sinclare, Marjoriam Sinclare, et Marietam Sinclare, filios et filias legitimos quendam bonae memoriae, Willielmi, olim Comitis Orcadiae et Cathensiae ac Domini de Sancto Claro dedisse, concessisse, alienasse, ac in perpetuum denasse et confirmasse, tenoreq. presentium dare, concedere, alienare, ac in perpetuum confirmare carissimo fratri nostro Domino Davidi Sinclare, militi, et Foldo Zetlandiae, pro fraternali amore et dilectione quamversus dictum fratrem nostrum habemus et geremus, et pro alijs gratitudinibus nobis per ipsum impensis, omnes et singulas ac integras terras de Swinburgh, cum pertinen. et contigen. jacen. in dominio Zetlandiae, ac omnes et singulas alias terras nostras jacen. in dicto dmo. Zetlandiae, nobis pertinen. ratione, decessus sive mortis dicti quondam Willielmi patris nostri, tenen. et haben. totas et integras praedict. terras de Swinburgh, cum earum pertinen. et contigen. ac omnes et singulas alias terras nobis pertinen. et spectan. ratione decessus, dicti patris nostri a nobis heredibus et successoribus nostris prefato Davidi militi, haeredibus suis et successoribus cessionariis, et assignatis in hereditate in perpetuum per omnes suas rectas, metas et divisas in longitu-

dine et latitudine, ac cum omnibus aliis et singulis libertatibus et commoditatibus proficuis, asiamentis, et pertinen. suis quibuscunq. ad praefatas omnes terras pertinen. et spectan. seu juste pertinere et spectare valen. in futurum, juste, libere, honorifice, bene, et in pace, sine aliquo obstaculo, contradictione, aut impedimento quibuscunq. conceden. et transferend. in eundem David militem, fratrem nostrum, omne jus et juris clameum hujusmodi omnium terrarum, cum pertinen. nobis, seu alteri nostrum, incumben. et pertinen. ex decessu dicti quondam Willielmi patris nostri seu alio quovis modo obligan. et astringen. nos et nostrum quem habet haeredes, successores, cessionarios et executores nostros in contrarium presentis chartae nostrae et contentorum in dandem in posterum qualitercunq.

Sed quod nos haeredes nostri successores et cessionarii sunt ab eisdem terris ab omni, jure et juris clameo tam petitorio, quam possessorio penitus domino exclusi, In cujus rei testimonii sigilla nostra propria presentibus sunt appensa apud opidum Edinr. die tertio mensis Decembris, anno Domini millesimo quadringentesimo nonagesimo octavo, coram his testibus, Mro. Jacobo Hewison, burgen. de Edinr. Doro. Matheo Dwell, Presbitero, Joanne Black, et Willielmo Keith, cum diversis aliis.

2. CHARTERS to BALFOUR of Westray.

ADAM, Bishop of Orkney and Zetland, by charter dated last of June 1560, granted to Gilbert Balfour and Margaret Bothwell his wife, and his heirs, the lands of Kirkbister, Noltland, and others, in the following terms: "viz. Kirkbister be-west, extenden. ad tres denariatas terrarum, Noltland be-west, extenden. ad quatuor denariatas terrarum et septem, et Bakka, extenden. ad novem denariatas terrarum, Firbo be-west, extenden. ad tres denariatas terrarum, Garth, extenden. ad tres denariatas terrarum, Clet ad tres denariatas terrarum, Southburgh, ad novem denariatas terrarum, Wa, ad triginta sex denariatas terrarum, Lie Bow de Noltland, cum lie dykside, ad octodecim denariatas terrarum, Rackwick, ad viginti septem denariatas terrarum, Akerness, ad octodecim denariatas terrarum, Mabak in Dapay in Westray, ad quatuor denariatas terrarum, cum dimidio ac suis pertinentiis, jacen. in insula de Westray, infra regalitatem et vicecomitatum Orcaden. et Shetland; de dicto reverendo patri et successoribus suis in feodi firma et hereditate, de mandato nostro visam, lectam, inspectam, et diligenter examinatam, sanam, integram, non rasam, non cancellatam, ad plenum intellexisse, sub hac forma: omnibus hanc cartam visuris vel audituris Adamus Dei et apostolicae sedis gratia Orcaden. et Zetlandiae Episcopus, salutem, cum benedictione divina, noveritis nos et capitulum nostrum ecclesiae cathedralis Orcaden. unanimi concensu et assensu capitulariter congregat.

utilitate et commodo nostro et nostrorum successorum undiq. praevisis et consideratis, diligentibus tractatibus et maturis deliberationibus praehabitis, in evidentem utilitatem dictae nostrae cathedralis ecclesiae, et augmentationem rentalis, extenden. annuatim, ad summam quadraginta solidorum octo numerorum usualis monetae regni Scotiae, plusquam unquam terrae subscriptae prius nobis et praedecessoribus nostris Orcaden. Episcopus persolverunt; ad decorem et policiam rei publicae regni et contemplationem statutorum Parliamenti, desuper editorum, necnon pro grande pecuniarum summa usualis monetae regni Scotiae, nobis in nostra maxima et urgenti necessitate nobis magna debitorum mole in bullarum nostrarum provisiones ad pastorale nostri Episcopatus officium a curia Romana ingrassantibus, tumultibus, bellicis et guerris, heresibus, erroribus, sasinatibus per totam fere orbem, vigentibus itinere nudine tuto impetratione, lenatione usu executione et publicatione per dilectum nostrum Gilbertum Balfour, dictarum nostrorum ularum, et provisionis a Romana curia impetratorem et ad patriam portatorem suis in principis sumptibus et impensis, cum maximo sui etiam corporis periculo oppress. et onerat. in pecunia numerata plenarie et integre pre manibus persoluta et in utilitatem nostram et dictae nostrae cathedralis ecclesiae totaliter conversa, necnon pro variis et diversis auxiliis, servitiis, favoribus, et bene meritis nobis per dictum Gilbertum multipliciter impens. Dedissee, concessisse, assedasse, arrandasse, locasse, et ad fewdi firmam, et emplicteosin. dimississe, praefato Gilberto Balfour et Margareta Bothwell, suae sponsae, et heredibus masculis inter eos de corpore suo legitime procreatis sew procreandis quibus forte deficientibus heredibus masculis, proximioribus dicti Gilberti suo cognomine fruentibus quibuscunq. totas et integras terras nostras, cum domibus edeficiis. Tenendas et habendas totas et integras praefatas terras nostras cum domibus et edeficiis, una cum mollendino praefato, terris, mollendinariis, et sequellis earund. cum singulis suis pertinentibus praefatis Gilberto et Margaretae suae sponsae, et heredibus suis masculis, quibus forte deficientibus, de nobis et successoribus nostris Orcaden. Episcopis, in fewdi firma et hereditate in perpetuam per omnes rectas metas, Reddendo inde annuatim dicti Gilbertus et Margareta sua sponsa, et heredes sui masculi praedicti quibus deficientibus heredes dicti Gilberti proximiores suo cognomine fruentes, nobis et successoribus nostris Orcaden. Episcopis qui pro tempore fuerunt, pro qualibet Lasta decem lastarum sexdecim melarum victualium vulgariter cost, sex libras extenden. in toto in pecunia ad sexaginta quatuor libras, tanquam pro antiquis firmis victualium omnium et singulorum terrarum nostrarum subscriptarum de Westra, ante presentem in feodationem solvi solitis et consuetis, necnon trigenta sex libras pro una lasta butiri, tanquam pro butiro dictarum terrarum ante presentem in feodationem solvi, solit. et consuet. necnon viginti libras argentas tanquam fir-

mas pecuniarum, dictarum terrarum, ante presentem in feodationem solvi, solitas et consuetas, et in augmentationem nostri rentalis extenden. ad quadraginta solidas et octo nummos, extenden. in toto ad summam centum trium librarum usualis monetae regni Scotiae, ad duos anni terminos fasta, viz. Omnium Sanctorum et inventionis Sanctae Crucis, per equales portiones, necnon praestando tres sectes ad tria nostra placita capitalia apud nostrum palacium de Kirkwal vel alibi annuatim tenenda de fendendoq. nos nostrum locum ecclesiam et cle-ram proponere insuper heredis dicti Gilberti duplicando. In cuius rei testimonium sigillum nostrum rotundum una cum sigilla communi didi nostri capitali huic praesenti cartae nostrae manibus nostris subscript. est appensum apud capitalum dictae nostrae ecclesiae cathedralis Orcaden. ultimo die mensis Junii, A. Dom. 1560, et nostrae consecrationis anno secundo.

This charter ratified by Henry and Mary, 1st October 1565.

By a charter dated 8th February 1565, Thomas Richardson, prebendary of St Catharine's Stouk, "intra ecclesiam cathedrallem Orcadensem," with consent of Adam, bishop of Orkney, &c. gave and granted in feu-farm and heritage to Gilbert Balfour of Westray, and his son and heir-apparent, Archibald Balfour, "ac haeredibus et assignatis dicti Archibaldi," the lands of Touquoy and others in Westray, and other lands in Sanday and Stronsay, "tenendas et habendas omnes et singulas terras supra scriptas, dicto Archibaldo Balfoure, ac haeredibus suis et assignatis quibuscunque antedictis *de me et successoribus* meis praefatae prebendae prebendariis in feudefirma seu emphytiosi et haereditate in perpetuum;" paying therefor to the said prebendary and successors the duties therein specified; "necnon in augmentatione dictae meae rentalis terrarum prescriptam summam sex solidorum et octo denariorum plusquam unquam terrae prescriptae mihi aut predecessoribus meis prius persolverit, nomine feudefirmae tantum, pro omni alio onere exactione," &c.—This charter ratified by a confirmation of Henry and Mary, dated the last day of January 1566. Vide Privy Seal Register.

Alexander Dick, Provost of the Cathedral church of Orkney, by a charter dated 17th June 1566, granted to Gilbert Balfour of Westray and his heirs-male, "sic quod omni tempore affuturo unicus haeres masculus successor post alium quamdiu vixerit possideat et gaudeat terris subscriptis secundum consuetudine Scotiae, non obstantibus legibus patriae Orchaden. eandem gavigationem seu possessionem recusantibus," certain portions of land in South Ranaidsay, with the lands included, paying therefor the sums therein specified, "tanquam pro universis debitis et ferines de predictis terris et partibus, &c. in feodationem annuatim solvi solitis et consuetis, necnon in augmentatione dicti nostri rentalis terrarum prescriptam summam 6s. 8d. plus"

quam unquam terrae prae dictae mihi, aut predecessoribus meis persolverunt." Confirmed the last day of January (by Henry and Mary) 1566, the year at that time being reckoned to commence in March.

3. CHARTER by Hieronimus Tulloch, subchanter of the Cathedral Church of Orkney, to Mr William Mudie of Breckness, and Catharine Sinclair his wife,—dated 16th October 1567.

The subjects are disposed to be enjoyed "more *Scotiae*, has terras meas subscriptas absq.—non obstante jure municipale vel consuetudine patriae Orchaden. in contrarium prohibente et statuente, viz. Totas et integras tres denariatas terrarum, una cum decimis garbalibus earund. que ab eisdem nunquam separare solebant et singulis suis pertinentiis—jacen in externa villa de Stromness, vulgo nuncupat. ye Utter Town, infra terra,—(some words illegible,)—Reddendo inde annuatim dict. Magister Willielmus Mudie et Katharina Sinclair ejus conj. &c. mihi et succesoribus meis dictae ecclesiae successoribus qui pro tempore fuerunt pro qualibet melor duodecim mellarum victual. vulgo nuncupat coist sex solidos et octo denario extenden. in pecunia ad summam quatuor librarum monete predictae et pro qualibet melor sex mellarum carnis, tres solidas monete antedict. extenden. in pecunia ad summam octodecem solidorum ac pro una lesponda butiri quinque solidos ejusd. monete—necnon pro lie scatsilver prefatarum terrarum, tres solidos; ac etiam in augmentatione dicti mei rentalis terrarum prescript. summa trium solidorum plusquam dict. terre, cum decimis garbalibus earundem inclusis et suis pertinentiis, &c."—ever paid before—"extenden. in integro ad summam quinque librarum et novem solidorum usualis monete predict. *tanquam pro antiquis fermis scattis*, victual. carnis buteri et argenti *cum augmentationem* mei rentalis predict. de prefatis terris cum decimis garbalibus earund. inclusis et singulis suis pertinentiis ante presentem infeodationem solv. solitis et consuetis ad duas ann. terminas festa.—viz. omni sanctorum et incarnatione sancte cunctis per equales portiones, nomine feudifirme, necnon prestando tres sortas ad placita capitalis regalitatis apud palatium episcopali de Kirkwall vel alibi annuatim tendenda"—Reserving to the bishop and his successors wrack, wair, and all other privileges belonging to him.

The King's rental was referred to, and made the rule of the Crown-rent, in all private grants of Earldom land in these Islands, when any of the inhabitants consented to receive tenures after the feudal manner of Scotland. William Sinclair of Ura, in compliance with the King's desire of introducing tenures

in Orkney and Shetland, resigned his lands to the Crown, * that he might receive them back (says the King) “secundum ordinem cancellariæ nostræ, infra regnum nostrum Scotiæ observat. ;” and, moreover, that others might be induced, by his example, to receive infeudations in the same manner, “Et etiam volens dare suis fratribus, et aliis inhabitantibus infra dictas patrias de Orkney et Shetland, bonam occasionem et exemplum cognoscere et accipere suas securitates de nobis, in simili modo sicut dictus Willielmus facit.” On this occasion he received back his lands under a general reddendo, with a reference to the King’s rental, in these words: “Solvendo inde—proficuas et divorias, et debita servitia dictarum terrarum, ab antiquo solit. et consuet. secundum nostrum rentale earundem.”

Again, the lands of Hunto were granted to David Sinclair under a certain reddendo—“*cum skattis regiis prout in rentali regio content.*” †

The Island of Gersa was confirmed to William Bannatyne, not for payment of a particular rent, but under a general reddendo, with a reference to the King’s rental, viz. ‘*For the Uthel skat and duty thereof usit and wont, conform to the auld rental allenarly.*’ ‡

4. CARTA CONFIRMATIONIS Cartæ 10th Decembris 1564. in favorem ROBERTI Comitis de ORKNAY,—October 28, 1581.—*Reg. Magni Sigilli, Lib. 35. No. 494.*

JACOBUS, Dei Gratia, Rex Scotorum, omnibus probis hominibus totius terre sue clericis et laicis, salutem, Sciatis nos cum auisamento et consensu dominorum nostri secreti consilii quandam cartam et infeofamentum feudifirme cum precepto et instrumento sasinæ desuper sequuto fact. dat. et concess. per dilectissimam nostram matrem post declarationem eius perfecte etatis in ipsius Parlamento tent. apud Edinburgh die mensis Decembris anno Domini millesimo quingentesimo sexagesimo quarto, dicte nostre matris dilecto fratri domino Roberto Stewart, consanguineo nostro, et heredibus de corpore ejus legitime procreatis seu procreandis, quibus deficient. dicte charissime matri nostre et successoribus suis libere reverten. de omnibus et singulis terris de Orknay et Zetland, cum omnibus et singulis insulis ad easdem pertinen. et suis pertinentiis quibuscunque, cum omnibus et singulis castris, turribus, fortaliciis, silvis, molendinis, multuris, piscationibus, tenentibus, tenendriis, et libere tenen. servitiis, cum integra superioritate libere tenentium advocacy et donatione ecclesiarum beneficiorum et capellaniarum earundem et omnibus ipsorum pertinentiis, ac de officiis vicecomitis vicecomitatus de Orknay, vicecomitatusque et foudrie

1578. Great Seal Register, B. 55. n. 30. † 1588. Ibid. Book 37. n. 369
‡ 1500. Ibid. n. 252.

Zetlandie, cum omnibus privilegiis libertatibus feodis et devoriis quibuscunque ad dicta officia pertinen. de mandato nostro visam lectam inspectam et diligenter examinatam sanam integram non rasam non cancellatam, nec in aliqua sui parte suspectam ad plenum intellexisse sub hac forma. MARIA Dei gratia Regina Scotorum, omnibus probis hominibus totius terre sue clericis et laicis salutem, Sciatis nos post nostram legitimam et perfectam etatem viginti unius annorum completam et dissolutionem in nostro Parlamento, cum avisamento trium statuum ejusdem fact. cum consensu et avisamento nostrorum computorum rotulatoris locasse et in feudifirmam dimisisse et hac presenti carta nostra confirmasse charissimo nostro fratri Roberto Stewart de Strathdoun, militi, et heredibus suis de corpore suo legitime procreatis seu procreandis, quibus deficient. nobis et successoribus nostris reverten. Totas et integras terras nostras de Orknay et Zetland, cum omnibus et singulis suis insulis eisdem pertinen. et spectan. cum suis pertinen. quibuscunque una cum omnibus et singulis castris, turribus, fortaliciis, silvis, molendinis, multuris, piscariis, tenentibus, tenandriis, liberetenen. servitiis, cum tota superioritate libere tenen. advocacione, donatione, ecclesiarum capellaniarum, et beneficiorum earundem, et omnibus suis pertinen. ac cum officio vicecomitatus de Orknay et vicecomitatus de lie foldrie de Zetland, cum omnibus privilegiis libertatibus feodis et devoriis eisdem officiis pertinen. et spectan. Quequidem terre insule et officia per quondam nostrum patrem excellentissime memorie pro annua solutione summe trium millium marcarum usualis monete regni nostri in assedatione locate fuerunt; TENENDAS et habendas totas et integras predictas terras de Orknay et Zetland, cum omnibus et singulis aliis insulis eisdem pertinen. et spectan. una cum omnibus et singulis castris, turribus, fortaliciis, silvis, molendinis, multuris, piscariis, tenentibus, tenendriis, et liberetenen. servitiis earundem, cum universa superioritate libere tenen. advocacione donatione ecclesiarum, capellaniarum, et beneficiorum, earundem, et omnibus suis pertinentiis, ac cum prefato officio vicecomitatus de Orknay et vicecomitatus de lie foldrie de Zetland, cum omnibus privilegiis libertatibus feodis et devoriis eisdem pertinen. et spectan. prefato Roberto nostro fratri et heredibus suis de corpore suo legitime procreatis seu procreandis, quibus deficient. nobis et successoribus nostris iterum reversur. de nobis et successoribus nostris in feudifirma et hereditate imperpetuum per omnes rectas metas suas antiquas et divisas prout eedem terre et insule jacent in longitudine et latitudine, in domibus edificiis, silvis, planis, moris, marresiis, viis semitis aquis, stagnis, rivulis, pratis, pascuis et pasturis, molendinis, multuris et eorum sequelis, aucupationibus, venationibus, piscationibus, petariis, turbariis, carbonibus, lignis, lapicidiis, lapide et calce, fabrilibus, brasinis, brueriis et genestis herezeldis et merchetis, cum potestate curias dicti vicecomitatus et alias curias dict. terrarum et insularum tenendi et in eisdem justiciam tam in actionibus criminalibus quam ci-

vilibus juxta juris exigentiam ministrandi ac clericos seriandos, adjudicatores aliosque officarios et membra curie necessaria creandi ac omnia alia et singula exercendi et utendi que in premissis et circa ea necessaria fuerint seu quoque modo opportuna ac cum omnibus aliis et singulis libertatibus, commoditatibus, proficuis, et asiamentis ac justis suis pertinen. quibuscunque libere quiete plenarie integre honorifice bene et in pace sine aliqua revocatione aut contradictione quacunque; REDDENDO inde annuatim dictus Robertus et heredes sui prescripti nobis et successoribus nostris dictam summam trium millium marcarum monete Scotie pro quaquidem summa eedem terre perprius per dictum quondam nostrum patrem ut predicatur locate fuerunt, ac etiam summam decem marcarum in augmentationem nostri rentalis annuatim plusquam predictae terre et insule ante assedationem earundem persolverunt extenden. in integro predict. antiqua firma et augmentatio ad summam trium millium et decem marcarum monete predictae ad duos anni terminos festa viz. Penthecostes et Sancti Martini in hieme per equales portiones nomine feodifirme Necnon heredes dicti Roberti duplicando dictam feudifirmam primo anno eorum introitus ad predictas terras insulas et officia prout usus est feudifirme tantum Insuper volumus et concedimus ac pro nobis et successoribus nostris decernimus et ordinamus quod unica sasina nunc per dictum Robertum nostrum fratrem, et per heredes suos omnibus temporibus affuturis apud castrum de Kirkwall suscipien. stabit et sufficiens erit sasina pro omnibus et singulis sepedictis terris insulis et officiis vicecomitatus, cum castris, turribus, fortaliciis, silvis, molendinis, multuris, piscariis, tenentibus, tenandriis, et libere tenen. servitiis earundem, cum omni superioritate libere tenen. ad vocatione donatione et jure patronatus ecclesiarum capellaniarum et beneficiorum earundem et suis pertinen. ac si una particularis sasina et specialis de eisdem suscepta fuisset non obstante quod eedem non simul et contigue jacent circa quam dispensamus per presentes. In cujus rei testimonium huic presenti carte nostre magnum sigillum nostrum apponi precepimus testibus Reverendissimo in Christo patre Joanne Archiepiscopo Sanctiandree, &c. dilectis nostris consanguineis Jacobo Comite de Mortoun Domino Dalkeith cancellario nostro Willelmo Comite Mariscalli Domino Keyth, dilectis nostris familiaribus consiliariis Richardo Maitland de Lethingtoun equite aurato nostri secreti sigilli custode Magistro Jacobo M'Gill de Rankelour Nethir nostrorum rotulorum registri ac consilii clerico et Joanne Bellenden de Auchnoull, milite, nostre justiciarie clerico. Apud Striuiling vicesimo sexto die mensis Maij anno domini millesimo quingentesimo sexagesimo quinto, et regni nostri vicesimo tertio; QUAMQUIDEM cartam et infeomentum feudifirme cum precepto et instrumento sasine desuper sequuto In omnibus suis punctis et articulis conditionibus et modis ac circumstantiis suis quibuscunque in omnibus et per omnia forma pariter et effectum

ut premissum est Approbamus Ratificamus ac pro nobis et successoribus nostris pro perpetuo confirmamus salvis et reservatis nobis et successoribus nostris firmis feudifirme subscript. nobis et predecessoribus nostris, de omnibus et singulis prefatis terris insulis et aliis supra nominatis prius debitis et consuetis Et nunc considerantes quam procul prefate terre a reliquis partibus hujus regni jaceant remote et specialiter ab ordinario loco supreme justicie ejusdem, et quod nos et predecessores nostri raro easdem frequentavimus necessitate justicie quotidie crescente prout multitudo populi increscit Perpendentes etiam ingentes molestias per inhabitatores dictarum terrarum perprie perpassas et quas perpeti possunt continua invasione ipsorum per Hibernicos et vagabundos super occidentali et boreali partibus hujus regni commoran. et piratarum extraneorum nostros liegios et subditos, infra limites prefatarum patriarum continuo apprimendo que reprimi non possunt absque potestate magne et milite persone ibidem continuo commorantis caterna robustorum munite perpensis, etiam annuis devoriis et feudifirmis in prefato infeofamento content. annuatim extenden. ad tria millia et decem marcas in gratuita solutione, et quod nostri predecessores ordinarium camerarium pro collectione devoriarum dictarum terrarum ad inhabitantibus easdem quibus magna portio earundem ab antiquo defalcabatur pro paupertate tenentium et terre sterilitate preter laborem et expensas pro transnectione caragio et periculo firmarum victualium predictarum quas per mare sustinere cogebanter expositas, Preter etiam magnum feodum annuatim et devoriam de nostris redditibus vicecomiti de Orknay et custodi castri de Kirkwall, assedatoribus nautis et nunciis annuatim exceden. summam quingentarum librarum in victuali carne butiro et molendini multuris persolut. Intelligentes etiam prefatum Dominum Robertum Stewart et ejus predictos inhabiles esse administrationi justicie tali modo prout congruit quieti prefatarum patriarum et inhabitantium earundem, nisi casualitates et eschaeta personarum contra leges delinquentium et tholomea et custome extraneorum prefatis terris appropinquantium prefato Domino Roberto et suis predictis quo commodius prefatis officiis intendere possunt concedantur et conferantur; IDEO nos plenam considerationem premissorum sumentes necessitatisque administrationis justicie infra predictas bondas Et quod casualitates amerciamenta et eschaeta dictorum delinquentium et transgressorum parum aut nihil commodi nobis seu predecessoribus nostris Importarunt Et quo melius eis concedi poterint qui per seipsos et suos deputatos quos ibidem continuo residere contigerit pro justicie administratione et boni ordinis conservatione infra predictas bondas dedimus concessimus disposuimus et confirmavimus prout tenore presentis carte nostri damus concedimus disponimus et confirmamus dicto Domino Roberto Stewart et heredibus suis

predictis de corpore suo legitime procreatis seu procreandis officium justiciarii intra predictas bondas integras casualitates et feoda dictorum officiorum justiciarii vicecomitatus et foudrie ad eadem ab antiquo pertinen. vel quorumcunque justiciarii vicecomitis lie foudis de Orknay et Zetland respective in possessione perprie extiterant, cum plena potestate dicto Domino Roberto Stewart, et suis heredibus predictis prefata officia justiciarii vicecomitatus et foudrie, per seipios et suos deputatos unum seu plures exercendi et administrandi clericos seriandos adjudicadores et alia membra curie justicie creandi et expellendi ut congruum necesseve videbitur, Dando concedendo et committendo prefato Domino Roberto Stewart et suis predictis hereditariis justiciariis vicecomitibus et lie foudis predictis nostram plenariam potestatem et mandatum speciale omnes et singulos inhabitatores et residentes intra prefatas bondas pro quibuscunque criminibus et offensis indictatis dilatis accusatis, et convictis secundum cause exigentiam puniendi et super eisdem justiciam secundum regni nostri leges administrandi ut juris ordo postulat, Precepta pro summonitione inquisitorum et assisarum coram prefato Domino Roberto, et suis predictis justiciariis vicecomitibus et lie foudis predictis quibuscunque die et loco affigend. sub pena legis comparend. dirigi et debite executioni demandari causandi cum potestate etiam dicto Domino Roberto et suis predictis justiciariis vicecomitibus et foudis predictis omnes et singulas escaetas amerchiamenta et alias penas nobis per inhabitatores prefatarum terrarum de Orknay et Zetland nobis debitas pro transgressione legum regni nostri seu pro quacunque alia causa eadem juste exigi poterint, cum integro wraik et waith, que inter limites predictarum terrarum vel littus marinum earundem aliquo tempore affuturo invenire contigerit, cum integro tholomeo portorii per quemcunque extraneum cuicunque parti dictarum terrarum de Orknay et Zetland appropinquant. per semetipsos prius solvi solitis et consuetis et super iisdem libere ad sue voluntatis libitum pro ipsorum predicta auscultatione in administratione justicie et predictorum officiorum, Proviso nihilominus quod magne custume bonorum et mercantiarum e regno nostro expositurum ad nos pertinen. sub presenti dispositione nullatenus comprehendentur sed eadem apud nos et successores nostros ut prius remanebunt. Preterea considerantes bonum fidele et gratuitum servicium nostre charissime matri et nobis per dictum nostrum consanguineum prestitum postulante etiam proximitatesanguinis volentes etiam dictum Dominum Robertum in honoribus prout congruit promoveri secundum ejus benemerita et proximitatem sanguinis cum avisamento predicto; CREAVIMUS et Ereximus prout tenore presentis carte nostre erigimus et creamus tenandriam et dominium predictarum terrarum de Orknay et Zetland, cum omnibus et singulis insulis ad eadem pertinen. et suis pertinen. quibuscunque, Cum omnibus et singulis castris, turri-

bus, fortaliciis, silvis, molendinis, multuris, piscationibus tenentibus, tenandriis, et libere tenentium servitiis earundem, Integram superioritatem libere tenentium advocacione et donatione ecclesiarum beneficiorum et capellaniarum earundem et omnibus ipsorum pertinentiis, una cum officiis justiciarii vicecomitatus de Orknay et foudrie de Zetland, cum omnibus privilegiis libertatibus feodis devoriis ad dicta officia pertinen. et incumben. integra amerchiamenta escaetas casualitates wrak et wayth, cum omnibus ipsorum privilegiis commoditatibus et pertinen. tholomeis portoriis et aliis predictis in Comitatum et Dominium, viz. terras de Orknay cum pertinen. annexis et connexis earundem comitatum de Orknay appelland. Et terras de Zetland, cum annexis connexis et pertinentiis earundem omni tempore affuturo dominium de Zetland nuncupand. Ordinando dictum Dominum Robertum heredes successores suos Comites de Orknay et Dominos Zetlandie cognominandos dando et concedendo ipsis titulum honorem locum et preeminentiam Comitis et Domini In omnibus Parliamentis Consiliis Conventionibus et Congregationibus quibuscunque similiter et adeo libere sicuti aliquis Comes seu Dominus Parliamento in hoc regno honorem dignitatem et preeminentiam Comitis seu Domini in Parlamento per prius gaudebat Suadentibus etiam premissis cum avisa-mento predicto Univimus anneximus, creavimus, et incorporavimus prout tenore presentis carte unimus annectimus creamus et incorporamus Totum et Integrum prefatum comitatum de Orknay et dominium de Zetland, cum omnibus et singulis insulis ad eadem pertinen. cum omnibus ipsorum pertinentiis quibuscunque, castris, turribus, fortaliciis, silvis, molendinis, multuris, piscationibus, tenentibus, tenandriis, et libere tenentium servitiis earundem, cum integra superioritate libere tenen. earundem advocacione et donatione ecclesiarum beneficiorum et capellaniarum earundem officia justiciarii vicecomitatus de Orknay et vicecomitatus et foudrie de Zetland, cum singulis privilegiis libertatibus feodis et devoriis quibuscunque ad predicta officia pertinen. tholomea portoriis wraik wayth casualitates amerchiamenta et alia quecunque particulariter supra scripta in unam tenandriam comitatum et dominium predict. ORDINANDO et constituendo castrum de Kirkwall principale messuagium dicti comitatus et domini ac etiam decernendo et ordinando sasinam nunc per dictum comitem de Orknay et dominium Zetlandie apud castrum de Kirkwall, et per ejus heredes predictos tempore affuturo ibidem sumendam stare et extendere et sufficientem fore sasinam pro omnibus et singulis prefatis terris dicti comitatus Orchadie et domini de Zetland, cum omnibus et singulis insulis castris, turribus, fortaliciis, silvis, molendinis, multuris piscationibus, tenentibus, tenandris, libere tenen. servitiis advocacione et donatione ecclesiarum beneficiorum et capellaniarum earundem superioritate officiis justiciarii comitatus Orchadie foudrie Zet-

landie privilegiis libertatibus feodis et devoriis tholomiis portor-
riis, wraik, wayth, wair, casualitatibus amerchiamensis escaetis et
aliis quibuscunque particulariter supradictis non obstante quod
eodem invicem insimul et contigue non jacent penes que nos
cum avisamento predicto pro nobis et successoribus nostris te-
nere presentis carte nostre dispensamus imperpetuum; **TENEN-
DAS ET HABENDAS**, omnes et singulas prefatas terras
dicti comitatus Orchadie et domini de Zetland, cum omnibus
et singulis insulis ad eadem pertinen. et spectan. et aliis perti-
nen. quibuscunque, cum omnibus et singulis castris, turribus, for-
taliciis, servitiis, molendinis, multuris, piscationibus, tenentibus,
tenandriis, ac libere tenen. servitiis earundem integram superiori-
tatem libere tenen. advocacione donatione ecclesiarum beneficio-
rum et capellaniarum earundem, cum omnibus suis pertinen.
cum officiis justiciarii vicecomitis vicecomitatus de Orknay et
foudrie Zetlandie, cum omnibus privilegiis, libertatibus, feodis
et devoriis ad dicta officia pertinen. et spectan. tholomeis porto-
riis amerchiamensis eschaetis casualitatibus, wraik, wayth, et
wair, cum omnibus ipsorum privilegiis libertatibus feodis com-
moditatibus devoriis, annexis, connexis, partibus, pendiculis et
pertinentiis ipsorum predictis in dictum comitatum Orchadie
et dominium Zetlandie creat. et erect. prenominato Domino
Roberto et heredibus suis predictis de corpore suo legitime pro-
creatis seu procreandis nunc comitibus et dominis Zetlandie,
Quibus deficientibus nobis et successoribus nostris reverten-
de nobis et successoribus nostris, viz. prefatas terras dicti comi-
tatus et domini insulas castra turres, fortalicia, silvas, mol-
endina, multuras, piscationes, advocacione et donatione ecclesia-
rum beneficiorum et capellaniarum superioritatem tholomea
portoria, wraik, wayth, et wair, et alia predicta in feudi-
firma et hereditate et predicta officia vicecomitis vicecomita-
tus Orchadie justiciarii et vicecomitis et foudrie Zetlandie pre-
dict. in feodo hereditate ac libere alba firma imperpetuum per
omnes rectas metas suas antiquas et divisas prout prefatus com-
tatus dominium aliaque predicta jacent in longitudine et latitu-
dine in domibus edificiis, boscis, planis, moris, maresiis, viis semi-
tis, aquis, stagnis, rivulis, pratis, bondis, campis, pascuis, pasturis
et lesuris, molendinis, multuris, et eorum sequelis, aucupationibus
venationibus, piscationibus, petariis, turbariis, carbonibus, carbo-
nariis, cuniculis, cuniculariis, columbis, columbariis fabrilibus bra-
sinis, brueriis, et genestis silvis nemoribus et virgultis lignis tignis,
lapidiciis, lapide, et calce cum communi pastura introitu et
exitu, Cum potestate etiam dicto comiti et suis predictis curias
Justiciarii vicecomitis et foudrie intra quamcunque partem pre-
dictarum terrarum statuendi inchoandi affigendi affirmandi
easdemque quoties opus fuerit continuandi in eisdem justiciam
tam in criminalibus quam in civilibus actionibus prout de jure
equitate et justicia congruit administrandi ac omnia alia et sin-
gula faciendi gerendi et exercendi que ad dicta officia justici-

arii et foudrie de jure seu regni consuetudine pertinere dinoscuntur vel que a quibuscunque aliis justiciariis vicecomitibus et foudis in hoc regno gerunter seu exercentur, Cum omnibus et singulis commoditatibus libertatibus proficuis et asiamentis ac justis suis pertinen. quibuscunque tam non nominatis quam nominatis tam subtus terra quam supra terram procul et prope ad predict. terras comitatum dominium, cum universis suis pertinen. particulariter suprascript. spectan. seu juste spectare valen. quomodolibet in futurum libere quiete plenarie integre honorifice bene et in pace sine aliqua revocatione contradictione impedimento aut obstaculo aliquali ; REDDENDO inde annuatim dictus Dominus Robertus Stewart et sui predicti comites et domini suprascripti nobis et successoribus nostris et nostrorum computorum rotulatoribus et camerariis pro tempore summam trium millium et decem marcarum usualis monete regni nostri, ad duos anni terminos consuetos festa viz. Penthecostes et Sancti Martini in hieme, per equales portiones firme nomine feudifirme Necnon duplicando dictam feudifirmam et devoriam primo anno introitus dicti comitis heredum ad prefatas terras insulas castra turre fortalicia, et alia particulariter suprascripta prout usus est feudifirme tantum ; Et hoc tanquam antiquam feudifirmam augmentationem et duplicationem pro prefatis terris aliisque suprascriptis prius solvi solitis et consuetis ac in infeofamento feudifirme dicto comiti et domino suisque predictis modo suprascripto specificat. et content. necnon solvendo annuatim nobis et successoribus nostris pro prefatis officiis justiciarii vicecomitatus et foudrie unum denarium monete predicte apud dictum castrum de Kirkwall in festo Penthecostes nomine feudifirme si petatur tantum, pro omni alio onere quod inde exigi potest vel requiri, necnon administrando justiciam in dictis officiis tenentibus et inhabitantibus dictarum terrarum et aliis quorum interest vel intererit secundum leges prout dictus comes et sui predicti Deo omnipotenti et nobis desuper respondere voluerint. IN CUJUS REI testimonium huic presenti carte nostre confirmationis magnum sigillum nostrum apponi precepimus testibus predilectis nostris consanguineis et consiliariis Esmo Lennocie Duce, Comite de Dernelie, Domino Tarboltoun, Dalkeith et Aubigny magno regni nostri camerario, Colino, Ergadie Comite Domino Campbell et Lorne, &c. cancellario ac justiciario nostro generali, Reverendissimo ac venerabili in Christo patribus Patricio Sanctiandree archiepiscopo Roberto commendatario monasterii nostri de Dumfermling, nostro secretario, dilectis nostris familiaribus ac consiliariis Alexandro Hay, nostrorum rotulorum registri ac consilii clerico, Ludovico Ballendende Auchnoule, milite, nostre justiciarie clerico, Roberto Scott nostre cancellarie direttore, et Magistro Thoma Buquhannane de Ybert nostri secreti sigilli custode : Apud Halyrudehous, vicesimo octavo die mensis Octobris anno Domini millesimo quingentesimo octuagesimo primo et regni nostri decimo quinto.

5. EXCERPT from ALIA CARTA eiusdem COMITIS.

Ibid, No. 495, 18 Dec. 1581.

—Totam et Integram insulam de Cava, cum pertinentiis jacen. infra vicecomitatum nostrum de Orknay. Que per prius fratribus ordinis predicatorum de Innernes pertinuit ac etiam Wilhelmo Halcro de Aikeris, per nos disposita fuit et nunc nobis spectat—

6. CARTA Regis JACOBI VI. PATRICIO Comiti de ORKNAY, Domino ZETLAND, &c. Comitatus de ORKNAY et Dominii de ZETLAND, Mar. 1, 1600.

JACOBUS, Dei Gratia, Rex Scotorum, omnibus probis hominibus totius terre sue clericis et laicis, salutem: Sciatis nos post omnes nostras revocationes speciales et generales, ac dissolutionem omnium terrarum nobis in proprietate pertinen. fact. in Parlamento nostro tent. apud Edinburgh, mense Junii, anno Domini millesimo quingentesimo nonagesimo quarto, cum expresso consensu et assensu nostri consilarii et familiaris servitoris Domini Davidis Murray de Gospetrie, militis, nostrorum computorum rotulatoris aliorumque dominorum, commissionariorum, constitutorum, ad modificandas compositiones, infeofamentorum per nos concedendorum de omnibus terris in eodem Parlamento dissolutis, dedisse, concessisse, locasse, assedasse, arendasse, et ad feudifirmam seu emphiteosim hereditarie dimisisse; et hac presenti carta nostra confirmasse, nec non tenore ejusdem dare, concedere, locare, assedare, arrendare, et ad feudifirmam seu emphiteosim hereditarie dimittere ac disponere, et hac presenti carta nostra confirmare, predicto nostro consanguineo et confiso consiliario Patricio, Orchadie Comiti, Domino Zetland, &c. suisque heredibus masculis de corpore suo legitime procreatis seu procreandis, quibus deficient. Johanni Stewart, ejus secundo fratri germano, et heredibus masculis de corpore suo legitime procreatis seu procreandis, quibus deficient. Magistro Jacobo Stewart, ejus tertio fratri germano, et heredibus masculis de corpore suo legitime procreandis, quibus deficient. Roberto Stewart, quarto fratri germano dicti Patricii Orchadie Comitis, et heredibus masculis de corpore ejus legitime procreandis, quibus etiam deficient. charissimo nostro consanguineo et consiliario Ludovico, Duci de Lennox, Comiti de Dernlie, &c. et heredibus masculis de corpore ejus legitime procreatis seu procreandis; quibus omnibus deficient. nobis et successoribus nostris iterum reversur. Totum et Integrum comitatum de Orknay et dominium de Zetland, firmas terras, insulas, skarreis lie holmes, cum castro de Kirkwall, molendinis, multuris, piscationibus, in aquis dulcibus et salsis, cum advocacione, donatione, et jure patronatus, omnium et singularum prelaciarum, rectoriarum, vicariarum,

ecclesiarum prebendariorum capellaniarum stellariorum aliorumque beneficiorum ecclesiasticorum fundat. et jacen. infra dictum comitatum et dominium et integra dominia de Orknay et Zetland tam horum quorum patronatus nobis nostrisque predecessoribus perprius spectabant quam Episcopo Orchadie et aliis personis et patronis ecclesiasticis ab antiquo pertinebant nuper in manibus nostris devenien. per leges acta et constitutiones nostri regni cum tenen. tenen. libere tenen. servitiis earundem integras terras lie uthale landis nuncupat. Rochanyng samyne una cum tolloneis ancoragiis custumis lie Wattill Foircoipland Settertoun Austercoip skattis land maillis wrak waith wais wair et aliis juribus et devoriis quibuscunque dictis comitatu et dominio pertinen. molendinis annexis connexis lie outsettis outbrekkis partibus pendiculis commoneis et pertinen. quibuscunque tam non nominat. quam nominat. ubicunque jacent que nobis predecessoribus aut successoribus nostris pertinen. seu quovismodo in futurum eisdem pertinere dinoscuntur, unacum officiis vicecomitatus justiciarie et faudrie de Orknay et Zetland custodie et constabularie castri nostri de Kirkwall cum omnibus feodis privilegiis et pertinentiis suis quibuscunque QUEQUIDEM comitatus dominium terre officia castra et alia particulariter supra recitat. cum omnibus suis pertinentiis perprius prefato nostro consanguineo et consiliario Patricio Orchadie comiti hereditarie in feudifirma pertinebant Et que et quas ipse personaliter in manibus nostris tanquam in manibus sui superioris earundem apud Edinburgum sursum reddidit pureque et simpliciter per fustim et baculum resignavit ac totum jus et clameum proprietatem et possessionem que et quas in eisdem habuit seu quovismodo in futurum habere potuit omnino quiete clamavit imperpetuum pro hac nostra nova carta et infeodatione sibi heredibusque suis masculis et tallie respective predictis modo inferius specificato nostro sub Magno Sigillo in debita forma danda et conficienda. Insuper nos pro bono fidei gratuito et promptu servitio nobis per dictum nostrum predilectum consanguineum Patricium Orchadie Comitem prestito et impenso et ut melior occasio ipsi in eodem perseverare prebeatur ac pro diversis aliis causis multifariis respectibus et bonis considerationibus nos moven. Ex deliberato animo et certa scientia cum avisamento et consensu antedict. de novo dedimus concessimus locavimus et in feudifirma seu emphiteosi hereditarie disposuimus tenoreque presentis carte nostre de novo damus concedimus locamus et in perpetua feudifirma seu emphiteosi hereditarie disponimus memorato predilecto nostro consanguineo et consiliario Patricio Orchadie Comiti heredibus suis masculis et tallie respective antedictis totum et integrum prefatum comitatum de Orknay et dominium de Zetland firmas terras insulas skarreis lie holmes cum castro de Kirkwall molendinis multuris piscationibus in aquis dulcibus et salsis cum advocacione donatione

et jure patronatus omnium et singularum prelaciarum rectoriarum vicariarum ecclesiarum prebendariorum capellaniarum steiliorum aliorumque beneficiorum ecclesiasticorum fundatorum et jacentium infra dictum comitatum et dominium et integra dominia de Orkney et Zetland tam horum quorum patronatus nobis nostrisque predecessoribus per prius spectabant quam Episcopo Orkney et aliis personis et patronis ecclesiasticis ab antiquo pertinebant nuper in manibus nostris devenientes per leges acta et constitutiones nostri regni cum tenentibus tenandariis libere tenentibus serviciis earundem integras terras lie uthale landis nuncupatas Rochanyng samyne unacum tolloneis ancoragiis custumis lie Wattill Foircoipland Settertoun Austercoip skattisland mailles wrak waith wais wair et aliis juribus et devoriis quibuscunque dictis comitatui et dominio pertinentibus quibuscunque tam non nominatis quam nominatis ubicunque jacent que nobis predecessoribus aut successoribus nostris pertinent seu quovismodo in futurum eisdem pertinere dinoscuntur et dicta officia vicecomitatus foudrie et justiciarie de Orkney et Zetland custodie et constabularie dicti nostri castri de Kirkwall cum omnibus feodis casualitatibus commoditatibus proficuis et devoriis eisdem officiis quovismodo spectant. Ac etiam jus privilegium et jurisdictionem libere regalitatis et justiciarie omnium et singularum prefatarum terrarum comitatus domini et aliorum respective antedictorum cum libera capella cancellaria et jurisdictione infra singulas earundem bondas ac aliis privilegiis et commoditatibus ad hujusmodi seu quamvis aliam liberam regalitatem infra hoc nostrum regnum spectantibus seu quovismodo pertinere valent. Necnon fecimus creavimus et constituimus tenoreque presentis carte nostre pro nobis et successoribus nostris facimus creamus et constituimus prefatum nostrum predilectum consanguineum Patricium Orkney Comitem suosque heredes masculos et tallie antedictos hereditarie nostros veros legitimos indubitatos et irrevocabiles vicecomites justiciarios faudos custodes et constabularios predictos Ac dedimus concessimus et disposuimus tenoreque presentis carte nostre damus, concedimus et disponimus ipsis omnia feoda casualitates commoditates et devorias eisdem officiis spectantibus que vicecomitibus justiciariis faudeis custodibus constabulariis camerariis assedatoribus et officiariis in computis camerariorum et foudriorum dicti comitatus et domini in diebus quondam charissimi nostri avi et matris Ac per eorum computorum rotulatores pro tempore intromissa leuata et allocata fuerunt Preterea nos cum avisamento predictorum pro causis supra recitatis dedimus concessimus et disposuimus tenoreque presentis carte nostre damus concedimus et disposuimus sepefatto predilecto nostro consanguineo Patricio Orkney Comiti heredibusque suis masculis et tallie respective et successive antedictis totum jus interesse jurisclameum tam petitorium quam possessorium quem

seu quas nos nostri predicesores aut successores ad prefatum comitatum et dominium terras insulas lie holmes cum castris turribus fortaliciis molendinis silvis piscationibus advocacionibus donationibus patronatum juribus officiis tenentibus, tenandriis libere tenentibus serviciis et aliis particulariter et generaliter supra recitatis aut ad aliquam ipsarum partem vel ad census firmas proficua et devorias earundem de quibuscunque annis seu terminis preteritis habuimus habemus seu quovismodo habere vel clamare poterimus aut poterint virtute quorumcunque actorum Parliamenti revocationum aliorum actorum legum seu constitutionum nostri regni eschaete forisfacture aut ob quamcunque aliam causam actionem seu occasionem preteritam diem date presentis carte nostre precedentem Renunciando et exonerando eisdem cum omnibus actione et instantia earundem pro nobis et successoribus nostris prefato predilecto nostro consanguineo heredibus suis masculis respective et successive predictis pro nunc et imperpetuum cum pacto de non petendo Ac cum supplemento omnium defectuum tam non nominatorum quam nominatorum quos tanquam pro expressis in hac presenti carta nostra haberi volumus Cum potestate prefato nostro consanguineo Patricio Orchardie Comiti et heredibus suis masculis et tallie predictis ad cogendum et compellendum tenentes et possessores et inhabitatores predictarum terrarum vulgo lie uthale landis presentes et futuros contentare et persolvere ipsis omnes devorias de predictis terris juste debitis ac eorum jura et titula earundem ob quamcunque causam seu occasionem nobis competentem aut que nostris predicesoribus vel successoribus competere potuit seu poterit reducendi annullandi et retractandi quibus reductis proprietatem prefatarum terrarum tunc ut ex nunc et nunc ut ex tunc cum proprietate dicti nostri consanguinei terrarum et aliarum supra scriptarum consolidari volumus Nos autem considerantes dictas patrias Orchardie et Zetlandie nec recte et ut decet administrari nec earum incolas in debita obedientia contineri aut gubernari facile posse sine ordinariis jurisdictionibus et jurisdictionibus et juribus magistratibus aliis officiariis quibus earum jurisdictionum exercendarum cura mandari solet nisi castra et loca munitiora conductitorum militum ibidem commorantium custodiis firmentur littoraque undequaque ab hostibus peregrinorum incursionibus defendantur et marium et equorum vicini maris omniumque nostrarum aquarum piscationibus eorumque commodis in quibus maxima potissimaque pars commoditatum et emolumentorum dicti comitatus et domini insularum ejusdem reposita est peregrini et extranei arceantur atque omnino uti prohibeantur Nos igitur dedimus et concessimus tenoreque presentis carte nostre damus et concedimus plenam potestatem et libertatem prefato nostro consanguineo heredibusque suis masculis et tallie respective prescriptis ordinarias jurisdictiones constituere atque exercere

officiarios et stipendiarios milites conducere castra locaque munitionora presidiis munire naves cymbasque cujusque generis instruere iisque vicina maria occupare Atque ea omnia prestare quibus vel incolas dictarum insularum in officio et obedientia nobis debita jure continere et pacifice gubernare vel alieni generarum hostiles incursiones littoribus totisque insulis arcere Eosque piscationibus vicini maris circumjectarumque aquarum prohibere possit nisi impetrata dicti nostri consanguinei ejusque predictorum venia et permissione ad easdem piscationes admittantur Presertim vero ut cultius dictas piscationes earumque commoda in suum usum et utilitatem conservare et tueri queant Ac etiam nos post dissolutionem per nos in Parlamento nostro cum avisamento statuum ejusdem de omnibus venis et metallis regni nostri factam ut eadem cuilibet comiti domino baroni seu liberetenenti infra regnum nostrum pro suis partibus respective in feudifirma pro augmentatione nostri rentalis locarentur modo et pro causis in acto dicti nostri Parlamento desuper confecto contentis cum avisamento et consensu nostrorum fidelium et familiariorum consiliariorum Alexandri Magistri de Elphingstoun nostri thesaurii et Domini Davidis Lyndesay de Edzell militis metallorum magistri Ac cum consensu et assensu reliquorum nostri privati consilii et scaccarii dedimus concessimus locavimus arrendavimus et in feudifirma hereditarie emphiteosique perpetua assedavimus ac pro nobis et successoribus nostris pro perpetuo confirmavimus necnon tenore presentis carte nostre damus concedimus locamus arrendamus et in feodifirma emphiteosique perpetuo assedamus Ac pro nobis et successoribus nostris pro perpetuo confirmamus dicto nostro consiliario Patricio Orchardie Comiti heredibus suis masculis et tallie respective antedictis omnia et singula metalla auri argenti cupri eris stanni plumbi et aliorum metallorum mineralium venarum et fossilum quorumcunque que inuentasunt invenientur aut quovismodo inveniri possunt intra integro terminos bondas et limites omnium et singularum terrarum jacentium infra comitatum Orchardie et dominium Zetlandie omniumque terrarum insularum et aliarum eisdem comitatu et dominio vnitarum annexarum et incorporatarum necnon omnium aliarum terrarum intra quascunque partes et terminos Orchardie et Zetlandie respective jacentes non minus ecclesiarum quam aliarum pertinentium vel pertinere valentium ad dictum Orchardie comitem ejusque predictos tam in feodifirma aut proprietate quam in tenandria et superioritate (dicto comite et suis antedictis *vassallorum consensum ad id impetrantibus et obtinentibus*) cum plena potestate jure et libertate predicto Patricio Orchardie Comiti suisque predictis inquirendi scrutandi inveniendi apperendi detegendi erudendi fodiendi et elaborandi omnes et singulas dictas venas metalla mineralia et fossilia eaque colliquandi excoquendi secernendi perpurgandi et ad libitum e nostro regno aut in quascunque ejus partes transferendi omnia et singula dicta metalla auri argenti eris cupri

stanni plumbi aliorumque suprarecitat. vel alias eisdem ad libitum utendi per se servosque suos aut alios quoscunque tam peregrinos quam nostros legios quos seligere secumque in auxilium aut subsidium suum obducere eis libuerit Quos omnes nos pro nobis et successoribus nostris presentium tenore sub nostra speciali protectione et defensione suscipimus et capimus cum libera potestate et libertate prelibato charissimo nostro consanguineo et suis antedictis alienandi disponendi aut in feodum seu emphiteosim vel in assedationibus longis aut brevibus concedendi dictas venas mineralia et fossilia suis subtenantibus aliisque quibuscunque libitum fuerit tanquam sua propria bona et hereditas Ac cum omnibus aliis et singulis libertatibus privilegiis et commoditatibus pertinentibus vel pertinere valentibus ad predicta metalla mineralia et fossilia aut ad quecunque alia metalla et venas infra hoc nostrum regnum que per nos cuicunque persone vel personis in feudifirma hactenus concessa sunt aut in posterum dabuntur Insuper nos ex certa scientia et propriomotu creavimus fecimus et ereximus et per presentes pro nobis et successoribus nostris creamus facimus et erigimus tenandriam et dominium dictarum terrarum de Orknay et Zetland cum omnibus et singulis insulis ad eadem spectantibus et suis pertinentiis quibuscunque Ac cum omnibus et singulis castris turribus fortaliciis silvis molendinis multuris piscationibus tenentibus tenandriis libere tenentium serviciis earundem cum integra superioritate liberetenentium advocatione et donatione ecclesiarum beneficiorum et capellaniorum earundem et singulis suis pertinentiis una cum dictis officiis justicie et vicecomitatus de Orknay ac foudrie de Zetland custodie et constabularie dicti castri de Kirkwall una cum privilegio et jurisdictione libere regalitatis et justicie omnium et singulorum dictarum terrarum domini et aliorum supraspecificatorum Cum libera capella cancelarie et jurisdictione bondas earundem ac etiam dicta metalla auri argenti cupri eris stanni plumbi et omnium aliorum metallorum mineralium et fossilium quorumcunque que inuenta sunt inuenientur aut quovismodo inueniri possunt intra integras partes et bondas Orchadie et Zetlandie non minus terrarum ecclesiasticarum quam aliarum terrarum pertinentium vel pertinere valentium ad prefatum Patricium Orchadie comitem Cum omnibus et singulis privilegiis libertatibus feodis casualitatibus et devoriis dictis officiis respective incumbentibus Cum integris amerciamentis eschaetis casualitatibus wrak et waith cum omnibus earundem privilegiis commoditatibus et pertinentiis tolloneis customis et aliis supramentionatis in unum comitatum et dominium, viz. predictis terras de Orknay cum suis pertinentiis annexis connexis officiis et integris metallis et mineralibus antedictis comitatum de Orknay nuncupandum ac predictas terras de Zetland cum annexis connexis et pertinentiis earundem dominium de Zetland omni tempore affuturo nuncupandum Ordinan. dic-

tum nostrum consanguineum suosque heredes masculos et tallie respective et successive predictos Orchardie comites et dominos Zetlandie nuncupandos Dan. et Conceden. ipsis titulum honorem locum et preheminentiam unius comitis ac domini in omnibus nostris Parliamentis consiliis conventionibus et congregationibus quibuscunque et adeo libere sicuti aliquis alius comes seu dominus Parlamento infra regnum nostrum honorem dignitatem et preheminentiam comitis sen domini in Parliamentis perprius gaudebat et possidebat NECNON univimus annexavimus creavimus et incorporavimus tenoreque presentis carte nostre pro nobis et successoribus nostris unimus annexamus creamus et incorporamus totum et integrum prefatum comitatum de Orknay et dominium de Zetland cum omnibus et singulis insulis ad hujusmodi spectan. et suis pertinen. quibuscunque cum castris turribus fortaliciis molendinis multuris piscationibus tenentibus tenandriis libere tenentium servitis earundem cum integra superioritate libere tenen. advocacione donatione jure patronatus prelaciarum ecclesiarum beneficiorum et capellaniarum earundem dictisque officiis justiciarie et vicecomitatus de Orknay faudrieque de Zetland cum omnibus privilegiis libertatibus feodis et devoriis quibuscunque ad predicta officia spectan. toloniis portoriis wrak waith casualitatibus amerciamentis earundem metallis mineralibus et aliis particulariter prenomina- tis unacum dict. jure et jurisdictione libere capelle cancellarie et regalitatis infra integras bondas dictarum terrarum comitatus et domini cum privilegiis et commoditatibus eisdem quovismodo spectan. In unam tenandriam comitatum et dominium predict. Ordinando et constituendo castrum de Kirkwall principale messuagium fore dicti comitatus et domini Ac volumus et concedimus proque nobis et successoribus nostris decernimus et ordinamus quod unica sasina nunc per sepefatum nostrum consanguineum Patricium Orchardie Comitem et per heredes suos masculos respective et successive antedictos apud dictum castrum de Kirkwall capienda stabit et ipsis sufficiens erit sasina pro omnibus et singulis predictis terris comitatu dominio officiis metallis et aliis particulariter et generaliter suprarecitatis cum suis pertinen. non obstan. quod non jacent insimul et contigue sed in diversis partibus super quo nos pro nobis et successoribus nostris dispensavimus tenoreque presentis carte nostre dispensamus imperpetuum **TENENDUM** et **HABENDUM** totum et integrum predict. Orchardie comitatum et dominium de Zetland firmas terras insulas lie holmes skarreis cum dicto castro de Kirkwall molendinis multuris piscationibus in aquis salsis et dulcibus Ac cum dict. advocacione donatione et jure patronatus omnium et singularum prelaciarum rectoriarum vicariarum ecclesiarum prebendariorum capellaniarum stallariorum aliorumque beneficiorum ecclesiasticorum fundat. et jacent. infra predict. comitatum et dominium tam horum quorum patronatus nobis nostrisque predicesoribus perprius spectabant quam episcopo Or-

chadie et aliis personis et patronis ecclesiasticis ab antiquo pertinebant nuper in manibus nostris devenien. per leges acta et constitutiones regni nostri cum tenen. tenan. libere tenen. serviis earundem predict. integras terras lie uthale landis nuncupat. Rochanyng samyne unacum teloniis ancoragiis custumis Wattill Foircoipland Settertoun Austercoip Skattis-land mailis wrak waith wais wair et aliis juribus et devoriis quibuscunque dictis comitatu et dominio pertinen. molendinis annexis connexis lie outsettis outbrekkis partibus pendiculis commoneis et pertinen. earundem quibuscunque Tam non nominatis quam nominatis ubicunque jacent que nobis predicesoribus, aut successoribus nostris pertinent seu quovismodo in futurum eisdem pertinere dinoscentur NECNON cum dictis officiis vicecomitatus justiciarie et faudrie de Orknay et Zetland custodie et constabularie dicti castri nostri de Kirkwall cum singulis feodis casualitatibus commoditatibus proficuis et devoris eisdem spectan. que vicecomitibus et justiciariis faudis custodibus constabulariis camerariis assedatoribus et officiariis in computis camerariorum et faudriorum dictorum comitatus et domini in diebus quondam charissimi nostri avi et matris ac eorum computorum rotulorum pro tempore intromissa levata et allocata fuerint ut premissum est unacum jure privilegio jurisdictione libere regalitatis omnium et singularum prefatarum terrarum comitatus et domini et aliorum particulariter supra recitat. cum libera capella cancellaria et jurisdictione intra omnes bondas et limites earundem cum omnibus privilegiis commoditatibus et libertatibus cuicunque libere regalitati infra hoc nostrum regnum spectan. vel pertinere valen. Ac omnia et singula dicta metalla auri argenti cupri eris stanni plumbi et omnium aliorum metallorum mineralium venarum et fosilium quorumcunque que inventa sunt invenientur aut quovismodo inveniri possunt infra integras limites bondas et terminos omnium et singularum terrarum jacen. infra dictum comitatum Orchadie et dominium Zetlandie omniumque terrarum insularum et aliarum hujusmodi comitatu et dominio unitarum annexatarum et incorporatarum necnon omnium aliarum terrarum intra quasunque partes et terminos Orchadie et Zetlandie respective jacen. non minus ecclesiasticarum quam aliarum pertinen. vel pertinere valen. ad prefatum Orchadie comitem ejusque antedictos tam in feudifirma vel proprietate quam in tenandria et superioritate supra specificat. (dicto nostro consanguineo et suis prescriptis vassallorum consensu ad id impetrantibus et obtinentibus) cum omnibus libertatibus privilegiis et commoditatibus eorundem prenominais Memorato predilecto nostro consanguineo Patricio Orchadie Comiti et heredibus masculis de corpore suo legitime procreatis seu procreandis Quibus deficient. dicto Johanni Stewart ejus secundo fratri germano et heredibus masculis de corpore suo legitime procreatis seu procreandis Quibus deficient. Magistro Jacobo Stewart ejus tertio fra-

tri germano antedicto et heredibus masculis de corpore suo legitime procreandis Quibus deficient. dicto Roberto Stewart quarto fratri germano dicti Patricii Orchardie Comitis et heredibus masculis de corpore ejus legitime procreandis Quibus etiam deficient. antedicto charissimo nostro consanguineo Ludovico Duci de Lennox Comiti de Dernelie &c. et heredibus masculis de corpore ejus legitime procreatis seu procreandis Quibus omnibus deficient. nobis et successoribus nostris iterum reversur. in feudifirma et hereditate liberisque comitatu dominio et regalitate imperpetuum Per omnes rectas metas suas antiquas et divisas prout jacent in longitudine et latitudine in domibus edificiis boscis moris merresiiis viis semitis aquis stagnis rivolis pratis pascuis et pasturis molendinis multuris et eorum sequelis aucupationibus venationibus piscationibus petariis turbariis carbonibus carbonariis cuniculis cuniculariis columbis columbariis fabrilibus brasinis brueriis et genestis silvis nemoribus et virgultis lignis tignis lapicidiis lapide et calce cum curiis et earum exitibus herezeldis bludewittis amerciamentis et eschaetis dictarum curiarum cum communi pastura libero introitu et exitu cum thole theme furca fossa sok sak infang theif outfantageif pit et gallous vennyoun waith wais wert wrak wair cum naufragiorum reliquiis omnis generis et quibuscunque mari ejectis quocunque dictarum insularum loco vel littore acciderint sive aquis innatent. sive fundo insideant ultra infrave maritimi estas metas quecunque omnia comites et feudifirmarii Orchardie et Zetlandie factores et assedatores nobis et predicesoribus nostris earundem possidere aut quocunque modo vendicare et ad usum suum disponere consueverunt nullatenus agnoscendo auctoritatem vel jurisdictionem admiralli regni nostri cumque omnibus patellis salmariis per dictum nostrum consanguineum suosque predictos quibuscunque dictorum comitatus et domini in locis vel insulis edificandis et construendis ipsisque solis et nulli alteri infra terminos et limites dictarum terrarum et insularum licere volumus sive salmarias patellas edificare vel in eis salem conficere Ideoque per expressum prohibemus et v (eta) mus ne quisquam alius nostrorum subditorum intra dictarum insularum fines et bondas vel salmarias patellas construere aut salem conficere presumat Et cum omnibus et singulis privilegiis libertatibus commoditatibus proficuis asiamentis et pertinentiis ad dicta metalla venas et mineralia aut quecunque alia similia metalla infra hoc nostrum regnum virtute dicti acti nostri Parliamenti pertinen. aut pertinere valen. quomolibet in futurum Ac cum potestate etiam prefato nostro consanguineo et heredibus masculis et tallie respective antedictis creandi et constituendi vicecomites deputatos justiciarie deputatos foudrie deputatos ballivos dicte regalitatis constabularios custodes camerarios assedatores factores clericos serjandos adjudicadores ac alios officarios et membra curie necessaria pro quibus respondere tenebuntur Ac curias vicecomi-

tatus justiciarie faudrie curias capitales lie lawtingis nuncupat. curias regalitatis curias camerarias et omnes alias curias assignandi affigendi affirmandi tenendi et easdem quoties opus fuerit continuandi justiciam partibus conquerentibus ministrandi breviam dirigendi et eadem debite proclamari et decreverit faciendi et punitionem super legum transgressoribus et malefactoribus secundum leges exequendi et imponendi eschaetas omnium personarum dict. comitatus dominii et regalitatis inhabitant. ad cornu nostrum pro quibuscunque causis civilibus aut criminalibus legitime denunciatis. alias eschaetas confiscationes amerciamenta cum lie wrak waith wais vert et aliis casualitatibus quibuscunque ad dicta officia pertinent. vel que ex decretis sententiis et judiciis in dictis curiis latis provenient vel per processus ad cornu nostrum legitime deductos et executioni datos seu deducendo et executioni dandos levandi inducendi et ad suos proprios usus pro eorum laboribus applicandi et pro eisdem si opus fuerit namandi et distringendi precepta et literas prescriptionis namationis et incarcerationis prout interesse fuerit pro executione decretorum judiciorum et sententiarum secundum juris ordinem et consuetudinem in talibus usitatum dirigendi Et generaliter omnia alia et singula facien. geren. dicen. et exercen. que in premissis et circa ea necessaria seu quomodolibet opportuna fuerint firmum atque stabile habent. et habitur. totum et quicquid dicti vicecomites justiciarii faudrei ballivi sui que deputati in premissis rite duxerint faciend. simili modo et adeo libere sicut aliqui vicecomites justiciarii faudrei ballivi regalitatis et feudifirmarii dict. comitatus et dominii vel aliorum infra regnum nostrum eorum officiis funguntur et utuntur seu fungi et uti poterint Et sicuti justiciarius noster principalis et sui deputati in executione suorum officiorum quovismodo uti et facere poterit libere quiete plenarie integre honorifice bene et in pace sine revocatione contradictione impedimento aut obstaculo quocunque SOLVENDO annuatim sepefatus noster predilectus consanguineus heredes sui masculi et tallie respective et successive antedict. nobis et successoribus nostris nostrorumque computorum rotulatoribus et camerariis presentibus et qui pro tempore fuerint Pro dicto comitatu de Orkney terris et aliis particulariter supracitat. et omnibus pendiculis et pertinentiis eidem comitatui spectant. sexaginta tres lastas viginti tres milas tres lie settinggis quatuor martas cum dimedio marte victualium vocat. coift que est polenta aut farine centum et viginti quinque lastas unam melam duos settingis ordeï octuaginta et quindecim lastas unam milam quatuor settingis carniū sex lastas duodecim leispondas buttiri duas lastas sex leispondas sex martas olei et pro lie skat silver et landmaillis summam centum et novem librarum octo solidorum et unius denarii monete regni nostri cum mille pellibus cuniculorum ad duos anni terminos festa viz. Penthecostes et Sancti Mertini in hieme per equales portiones

viz. carnes buttirum oleum et moneta ad dictum festum Sancti Mertini et summam victualium prescript. annuatim ad festum Penthecostes Et pro dicto dominio Zetlandie centum et sexaginta septem paquetas panni vocat. wedmeill sex lastas sex bar-
 elas buttiri duas lastas olei centum et quinque doleras argentias pro lie wattill centum et et viginti petias aurias vulgo vocat. angell nobillis et viginti doleras argentias pro toloniis et custu-
 mis Zetlandie ad duos anni terminos, viz. festa ad vincula Petri et Sancti Mertini in hieme viz. buttirum oleum et census mone-
 te tolonie et lie wattill ad festum dicti Sancti Mertini et lie wadmeill ad dictum festum ad vincula Petri annuatim de anti-
 qua mensura et secundum pristinum usum solutionis de Ork-
 nay et Zetland sicuti predicesoribus nostris eorum camerariis et factoribus persolvi solitum et usitatum fuerat tanquam pro
 integris antiquis devoriis et maximo rentali quod unquam pro
 dictis comitatu et dominio cum omnibus suis pendiculis an-
 nexis connexis et pertinentiis quibuscunque persolvendum ex-
 hibentur absque ulla lesione seu diminutione antiqui et integri
 rentalis eorundem omnesque prefatas devorias annuatim super
 fundis antedictarum terrarum respective deliberandas et per-
 solvendas et summam tredecem librarum sex solidorum octo
 denariorum monete predicte in augmentationem rentalis earun-
 dem annuatim ad festum Sancti Mertini in hieme DEDUCENDO
 omnimodo et in solutam accipiendo prefato predilecto nostro
 consanguineo Patricio Comite Orchardie suisque heredibus mas-
 culis et tallie respective predictis omnia hujusmodi stipendia
 allocationes remunerationes et devorias que perprie cencessa
 et allocata erant per nostros predicesores custodibus dicti
 castri de Kirkwall cum omnibus et singulis aliis stipendiis feo-
 dis allocationibus devoriis et commoditatibus que allocata et
 deducta per nostros predecessores camerariis et factoribus
 Orchardie et Zetlandie et quorum in suis propriis manibus reten-
 tionem habebant nec per eos computata soluta aut deliberata
 nostris predecessoribus aut eorum collectoribus prescriptis
 pro tempore fuerant Necnon deducendo pro conservatione ju-
 risdictionum et officiariorum in eisdem inservien. Et similiter
 pro intertenemento navium et cimbarum ad defendenda littora
 et tenentes inhabitatores eorundem ab incursionibus fractorum
 hominum et aliorum extraneorum injuriis Et presertim ad
 custodiam et tutelam piscationum et commoditatum earun-
 dem que violenter rapiantur et possidentur per extraneos qu-
 orum injuriis inhabitatores dictarum insularum a dictis pesca-
 tionibus arcentur totum et integrum residuum dictarum feu-
 difirmarum et devoriarum respective suprarecitatur. quod excedit
 et superavit summam trium millium centum et decem mer-
 carum monete predicte Et eadem devoria trium millium cen-
 tum et decem mercarum annuatim persolvetur infra burgum de
 Edinburgh aut ubicunque nos nostrosve predecessores pro tem-

pore existere contigerit ad duos anni terminos festa viz. Penthecostes et Sancti Martini in hieme per equales portiones nomine feudifirme Necnon heredes masculi et tallie dicti nostri consanguinei Duplicando eandem devoriam primo anno eorum introitus ad dictum comitatum et dominium et alia respective suprarecitat. prout usus est feudifirme tantum Et similiter dictus noster consanguineus heredesque sui masculi et tallie respective antedict. REDDENDO inde annuatim nobis et successoribus nostris pro dictis officiis vicecomitatus faudrie justicie constabularie et regalitatis unum denarium usualis monete regni nostri in die Penthecostes Apud Castrum de Kirkwall nomine albefirme si petatur Ac prestando debitam et legitimam administrationem justicie nostris liegiis et inhabitatoribus dictarum regionum et omnibus aliis quorum interest secundum leges et consuetudines in earundem patriarum Orcha-die et Zetlandie ex prescripto justicie tantum Necnon Reddendo annuatim prefatus noster consanguineus et sui antedicti nobis et successoribus nostris thesaurariisque nostris presentibus et futuris eorum factoribus et servitoribus nostro nomine pro prefatis metallis decimam partem liberi lucris et devorie que ipsos acquirere contigerit ex omnibus et singulis dictis metallis auri argenti cupri eris stanni plumbi et aliorum metallorum que annuatim infra terras bondas limites et alia prescripta invenientur et elaborabuntur annuatim ad festum Penthecostes Insuper promittimus in verbo Principis efficere ut presens infeofamentum in nostro proximo Parlamento per avisamentum deliberationem et decretum ejusdem Parliamenti Ratificietur et approbetur tanquam concessum propter rationes supradictas et magnas previsas et rationabiles causas ad utilitatem regni nostri et honorem nostre Majestatis ut premissum est IN CUJUS rei testimonium huic presente Carte nostre Magnum Sigillum nostrum, apponi precepimus Testibus, &c. Apud Edinburgh primo die mensis Martii Anno Domini millesimo sexcentissimo ac Regni nostri anno trigesimo tertio. *

* As the grant immediately previous to this one is to be found in the printed act of Ratification 1692, it is not necessary to insert it here.

No. II.

GOVERNMENT and TRIALS of PATRICK STEWART,
Earl of ORKNAY.

IN the year 1600, Earl Patrick Stewart obtained his last grant of the earldom and lordship of Orknay and Zetland, and also a grant of the bishopric of Orknay. The powers conferred upon him were, as appears by the act of ratification in the Parliament of Scotland* in the year 1692, and these deeds, very extensive, having not only right to all the earldom and church property, but being invested with the jurisdictions of justiciary, sheriffdom, and foudry over those islands. Although his Lordship was thus clothed with all the powers which the law of Scotland could confer on a nobleman of the highest rank, there were circumstances in the Orknay and Zetland Islands which considerably modified the operation of the Scots law at the time alluded to. By the original mortgage from Norway it was settled that the Norwegian laws and customs were to continue in force during the non-redemption of the islands from Scotland; and the Scottish Legislature by a subsequent act continued the Scandinavian law†; so that the government of the islands was vested in the earl, in conjunction with a sort of local Parliament, exercising all the functions of a legislature, a judicial tribunal, and a jury. No record has yet been found of transactions in Orknay from 1600 to 1612; but there is in the General Register-

* Acts of the Parliaments of Scotland, Vol. III. p. 589.

† Act. Parl. 1567, Vol. III. p. 41.

House at Edinburgh a Court-book for Zetland, in which the legislative and judicial acts of Earl Patrick, with his lawtings, assizes, sheriffs, and fouds, are recorded. Of this book the following account is given by James Mackenzie in his MS. collections at Papdale; but I have minutely examined the original record.

“ ACCOUNT of a COURT-BOOK of the EARL of ORKNAY’S
in the General Register-House, Ann. 1602—1604.

“ THIS book, having no title of its own, is in the inventory of the Register-House entitled “ Register of the Sheriff-Court of Orknay and Shetland,” notwithstanding which it does not at all concern the Orknays, but belongs to Shetland alone; only I find several contracts and other deeds there entered and registered as in the Sheriff-Court books of both Orknay and Shetland: Also acts of cautionry and the like are here all enrolled and signed by the parties themselves and the witnesses, from whence the book may be concluded authentick.”

“ *Sheriff and Justiciary Circuit Court.*] The first court sits at Neip, July 3, 1602, for the district of Nesting, Lunesting, Quhailsey, and the Skerries, from thence it adjourns to Fetlar, thence to Unst, thence to Yell, afterwards to Delting, Waiss, Aithsting, Burray, Dunrosness, Brassay, and last of all to Tingwal, where the circuit ends about the middle of August next after. Anno 1603, June 9, the circuit again begins at Neip, and ends as above about July 15. And the next year after, which is 1604, it begins at Soundbrough, for the district of Dunrosness, June 20, and ends about the middle of August next following. These are called Sheriff and Justice Courts, which, at their first sitting in every district, are entered thus: The Sheriff and Justice Court of [e. j.] Nesting, halden (if the earl himself is not present) be Mr John Dishingtonn, Sheriff-depute of Zetland, at Neip, 9 Junii 1603. The suits callit, the Court lawfully fencit, the assise chosen, sworn, and admittit. Then follow the names of the jury, and afterwards an enrolment of the causes, whether civil or criminal, which are generally such as fall under the cognizance of Sheriffs or Lords

of Regality. And as an appeal lay from this Court to the Lawting, so it would seem that the judgments of the Fouds, or under-sheriffs, were in like manner subject to the review of the Circuit, of which there is an enrolment in these words :"

1. July, 1603.

The Judge and the Assyse ratifies and apprewis the Fold's doome of Waiss, made anent the swyne of Papa, that thai sall be snypit and ringit in tyme of summer and winter also, to the effect that the haill nye.bors in thair griss land and cornis may be frie of thair skayth ; and, failying thairof, the Fold to direct his officer, be the syght of nye.bors, to mark thame upon my Lord's mark to his Lordship's use.

The ordinance, however, being thought grievous, it was accordingly complained of, and sought to be reduced in the next *Lawting*,* which sat the 18th of same month, and to which the Circuit-Court was therefore subordinate, in the same manner that the under-court was to the Circuit.

Its authority.] The jurisdiction of this Court may in a good measure be gathered from the following Extracts of its Judgments, which help also to point out the jurisdiction and office of the Fouds.

3. July, 1602.

Wrack and Waif Goods.] Twa Barrels Pick castin in about the banks of the Skerries, an leispund iron tane out of an piece of an broken schip, for the quhilk the Fold† is decernit to be answerable to my Lord.

10. July, 1602.

An little Quhail com in be-west the hill, prycit be William a Quoyis and other nyt.boris to an gulzion ; an pellok cum in thair, prycit to 3 sh. Scots ; ane pellok cum in at Culwadale, prycit to three schillingis Scotis ; and ane Pellok cum in at Ramnageo, prycit to three schillingis Scotis, for the quhilk the Fold is decernit to be answerable to my Lord.

3. July 1602.

The quhilk day David Strang has promist to remove himself and his family out of the house whilk Jhone his brother set to him, and that within eight days, under the pain of 10

* This does not appear on the record of that date. A. P.

† The transgressors of a law against entering my Lord's holms, in the Sederunt of August 24, 1602, are appointed to be presented to the Sheriff or under-fold of ilk parochin, in order to be tried by an assise ; and in the same act, mention is made of " the Folds of ilk parochin or isle," July 5, 1604. " The haill Folds of the countrie " are ordained to bring in a criminal, in order to trial, before the Lawting-Court then next to come. In which Lawting, there being 22 persons upon the jury, six of them were Fouds. Hence we may conclude, the Fouds at this time were pretty numerous, much like the parochial bailiffs at present, one almost in each parish.

libs. And sicklike the Sheriff and the Assyse* ordains, according to his confession, William Neip, Fold, accompanied with three honest men,† to minister justice betwixt thame, and to place every man with his pairt of the timber of the ruiff of the house and house-mails restand.

The whilk day Edward Sinclair of Bulziester and William Sinclair of Ustanes has promist to uthers to compt and rakin amang thamselvs, befoir William Neip, Fold, and sax honest men with him, and this compt to be maid at Neip betwixt the day and dait heirof and the first day of August next to cum, but forder delay, ilk persoun under the pain of 40 libs. And sicklike, that baith the said parties sall have thair claims reddie agains the day, with their witnesses to preife the samen, under the pain foresaid.

10. July 1602.

The whilk day Erasmus Silverston doome lawit with Androw Poilsoun, for himself and in name of the rest of the nybours of Meille and Colvidale, within what day thai and every ane of them sould support and help him to pay the detts and dutties of the saidis landis, be reasoun that thai have eattin and destroyit the haill girse thairof with thair guidis; quhilk being considerit, ordainis sa monie of the saidis tenants as cannot quyte thame of the eitting of the said girss with their guidis, to support him in payment of the detts and duties of the saidis landis, ilk ane for thair awn partis, and that befoir the Fold and honest nyhbors, within the space of an monet, ilk persoun under the pain of ane dunira.‡

23. July 1602.

The quhilk day Andrew Hawik of Scatstay confest himself to be restand awand, to Hew Sinclair of Brughe, the gold and uther waris underwritten, that is to say, the summe of 20 aingell-nobills, 20 schillingis wodmell, 9 leispunds butter, 10

* The Sheriff and the Assise. Oft-time, it is said "The Judge and the Assise," but more frequently the Assise (alone,) who, in the Circuit-Court, are generally about 15, but in the Lawting sometimes 28 in number, and always in the quality of, or rather more than jurats or assistants to the Judge; even deliverances upon petitions and warrants for registering private deeds passing always in their name as well as the Judges, though the Earl himself were in the judgment.

† Accompaniet with thrie honest men, oft-times honest neighbours, of whom the number is commonly six and sometimes indeterminate. Examples of this are afterwards very frequent, as, in similar cases; so are they also in the customs of Norway, of which, in this country, they are doubtless the remains.

‡ Under the pain of an doonira: The doonira was a pecuniary mulct, probably the highest that a Foud could impose, as our bailies afterwards were limited to 10 libs. Scots, which they cannot exceed. Its value, however, I find nowhere ascertained; but, in compositions with the judge, it is often restricted to half an angel.

kannis oillie, and 7 gulzeons hard fische,* according to his obligation written and insert in the said Hew's compt-buik, subscribit with his awn hand, of the dait at Viggay the 9. day of December 1600, whilk, in respect of his confessioun, he is decernit to make payment of within the space of ane monet, under the pain of poynding.

5. August 1602.

One man having gripped half a rig of his neighbour's land, the Judge and Assize fine him for it, and ordains the haille land in Skellberry, of the King, kirk, and udel, to be partit be the Fold and sax honest nybors, and ilk owner to be possessit of his awn pairt, according to the use of nyhborheid.

3. July 1602.

Petty Crimes.] Laurence Still is tryit to have disobeyit the Fold's doome for certain debt restand to him, thairfore is decernit to pay an dunira, under the pain of poynding.

16. July 1602

It is tryit and provin, that David Foulisdail hes disobeyit the Fold in detaining ane servant quhilk he was decernit to leife, and keiping him all the winter thairafter; decernis him to pay 1 mark ilk nicht the tyme he detainit him, under the pain of poynding.

23. July 1602.

It is tryit that Gregorius Thomasoun brak the arrestment maid be the Fold of Zell upon certain corns; thairfoir is decernit to pay the sume of 10 libs.

5. August 1602.

James Barnetson and Adam Cromartie, baith proven in the Foldis buiks to have disobeyit to gang to my Lord's wark in Scalloway, as they were decernit; thairfoir ilk ane of thame ar decernit to pay for disobedience 40 sh.

21. June 1603.

Ingager in Leady is tryit to have steyit the deid unburyit, and thairfoir is decernit to pay 40 sh. under the pain of poynding; and ordains the hail commonis within the yle of Yell to burie thair deid how shone ony sall happin to die, without ony delay or impediment, ilk persoun under the pain of 40 sh. and ratifies and apprevis the decretis and doomes pronouncit and maid heiranent in all poyntis.

* Wadmel and fish being the chief commodities received here in trade, are therefore made the standard of rating other things by, a custom peculiar also to Iceland and the Feroe-Isles, who all have received it from Norway, the mother country.

5. July 1604.

Magnus Erasmussoun, for bein fow and drunken, contrair and agains the actis maid thairanent of befoir, and for bleiding himself be his drunkenness beneath the ene; thairfoir is decernit to pay for his fowness 10 libs. and for his bluid beneth the ene 4 markis, in exampil of utheris.

10. July 1602.

Crimes Capital, viz. Theft.] Anent the accusation of Margaret Peter's-dochter, for the theftous steilling of an sheip of hir nyhbors, having na sheip of hir awin, comperit the said Margaret in judgment, and confest the stowth of the said sheip, not knawing quha aucht the samen, confessing the samen to be done in plain hunger and necessitie; quhilk being considerit be the Assise, and trying this to be the first fault, decernis her haill guidis, and gere, and landis, gif ony be, to be escheit, and hirself to be banist the countrie within the space of an monet, at the least in the first passage; and gif she beis apprehendit with the walog of ane viris-thift* heirafter, to be tane and drownit to the daith, in the exampill of utheris.

Anent the accusation of Olaw Mawnsoun, for the theftous steilling of ane sheip of his motheris, quhilk was ransellit, and found with him, quha being accusit thairfoir in judgement, could not deny the samen; yet not the less the Assyse takand consideration thairinto, and finding the samen to be the first falt, decernis his and his wyffis haill guidis and gere and landis to be escheat, and themselfs to be baneist the countrie within the space of an monet, at the leist in the first passage, and gif thai be apprehendit in the walog of an viris-thift heiraftir, to be tane an put to the daithe, in exampill of utheris.

21. July 1602.

It is tryit and provin be certain Ranselmen, that Intale Automissounstand in Seter has stown certain fische out of the skoes of St Magnus parochin, and thir fische found in his house under the nyhbor's markis; and thairfoir his haill guidis and gere decernit escheit, and gif he beis apprehendit with the walog of an uris-thift heiraftir, to be tane and hangit be the craige quhill he die, in exampill of utheris.

23. Ditto.

In a case of repeated theft—The Assise (alone) finding the points of ditty for the maist pairt haillily provin, and trying

† Viris-thift, sometimes spelled uris-thift, i. e. a theft, though to the value of 1 ounce weight only: For, July 16, 1604, I find mention of viris or uris-lands also, which are doubtless the same with the cyvir or ounce-lands of Torpheus, p. 169 of his *Orcades*.

also (the criminal) to have been a notorious thief thir mony yeirs of befoir ; thairfoir thai all in one vote decernis his landis, guidis, and gere to be escheit, and himself to be tane to the Gallow-hill, and thair to be hangit be the craige whill he die, in example of utheris.

8. July 1603.

It is tryit that Ringzeon Cowpland has stown an sheif of bere fra Allan Anderson, and is said to be ane common and notorious pykir and an theife ; thairfoir decernis his landis, guidis, and gere to be escheit, and himself beneist the countrie within the space of an monet, at the leist in the first passage ; and gif he beis apprehendit with the walor of an uiris-thift heirafter, to be tane and hangit be the craige qubill he die, in exampill of utheris ; and ordains that none reset him in thair houses fra this furthe, ilk persoun under the pain of ane mark, in the nyght.

23. July 1602.

Suicide.] It is tryit and found that Janet Thomas'-dochter has slain herself upon the sie, and thairfoir decernis her guidis and gere escheit.

27. Ditto.

Jhone Ollawsoun, for hanging himself, his guidis and gere escheit.

20. June 1604.

Deforcement.] Anent the accusation of Arthor Skellberrie for the deforcing of Jhone Heefuird, officer, the tyme of the execution of his office of poynding for my Lordis dettis and deuties, lawfully provin and confest be himself befoir ane great number of the Assyse, quha confest the samen ; and thairfoir decernis the said Arthor's guidis and gere, and landis, gif ony be, to be escheat, and himself to be beneist the country within the space of ane monet, at the leist in the first passage.

10. July 1602.

Oaths.] Donald Smyt is dempt to quyte himself of the breaking of David Spence's Skeo, and taking an turbit-fisch out thairof, with the saxter-aith, in caise he faillzie the lawryt. aithe of befoir ; and faillzeing of saxter-aith, to pay saxe marks, and to underly the law thairfoir as stowth. And again, one is decerned "to quyte himself of another stowth with the twelter-aithe, because he has faillziet twice the lauryt.-aithe of befoir, and faillzeing thereof to pay 12 marks, and to underly the law thairfoir as stowt."

27. July 1602.

Pool Watson and his wyffe are dempt to quyte thameselfis of the stowt of thair nyt.bor's profite of butter, in respect that thair is mair butter found with thame with twa or thrie ky, nor

with thair nyhbors quilk has sevin ky, and that with the saxter-aith, because the actioun is wechtie; and failzeing thairof, to pay sax markis silver, and to underly the law thairfoir as wichcraft.

21. June 1603.

It is tryit that Walter has failzeat quittance of the saxter-aith of the stowt of lynis the last zeir, and according to the lawis is decernit to quyte himself thairof this zeir with the twelter-aith, and, failzeing thairof to pay 12 markis, and to underly the law thairfoir as stowt. In the Lawting Court of July 21, 1603, one is ordained to quit himsel of theft by the twelter-aith, because the stowth is great; and another to quit himself of the same theft with the saxter-aith only, in respect of his minority.

It is tryit that James Mawnson has dyit under quittance of the stowt of the syde of ane swyne of Margaret Jacob's dochter, and, in respect thairof decernis his moveabil guidis and gere to be escheit, according to the law, (died, I suppose, during the ultimate time allowed by law for this acquittance, which would seem to be a twelvemonth, i. e. during the interval betwixt the Circuit-court of one year and that of the next year after.) So also,

It is tryit that Magnus Blance has dyit under quittance of the stowt of his nyhbor's peits, and, according to the lawis decernis his guidis and gere to be escheit thairfoir.

16. July 1604.

One James Frisal being accused of theft, "quhairunto the Assyse takand consideration, and tryand all the premises to be of trewth, and that the said James had failzeit the saxter and twelter-aiths of stowt of befoir, thairfoir decernis the said James's haill guidis, gere, and landis, gif ony be, to be escheit, and him to be baneist the country within the space of ane moneth, at the leist in the first passage; and gif he beis apprehendit with the walor of ane viris-thift heirafter, to be tane and hangit be the craig quhill he die, in exampill of utheris.

"Another man being tried to have failed the twelter-oath of Stowth of before, and now only accused and ditty'd for stouth again, therefore his goods, gear, and lands are all confiscated, and himself banished as above."

16. July 1602.

Acts of Cautionry, &c.] The quhilk day Ossie Scot and James in Swartraseter becomis actit in manner following, that is to say, the said James, for James in Quione, and the said Ossie, for Magnus in Quione, for the entry of thame baith befoir my Lord and his deputes at Scalloway-Bankis, the second or thrid dayis of the Lating-Court next to cum, to underly the

law upon Sclander of Evil-speich, ilk ane of the said cautioners under the pain of 40 libs.: Likeas, the said James and Magnus binds and oblishes thame to relieve their cautioners foresaidis.

The quhilk dai, Ollaw Sutherland, Fold of Fetlair, becomes actit cautioner for the entry of Jhone of Dawick, befor my Lord and his deputis at Scalloway Bankis, the secund or third dayis of the Lating-Court next to cum, to underly the law for the alledgit wrongous intromissioun with certain of the quhaill quilk cum in at Vigga, being the Kingis wreck, [sometimes to underly the law upon certain points of thift as sall be qualifeit in ditty agains one] and that under the pain of 40 libs.: Likeas the said Jhone bindis and oblishes him, his landis, guidis, and gere to relief his cautioner foresaid.

23. July 1602.

The quhilk dai Andrew Thomassoun constitutes Andrew Hawick in Scatstay his proctor, to compeir befor my Lord and his deputis at the next Lating, to persue and defend in all his causes, and as neid beis to adduce ane proctor in his place, providing he be answerable for him as law beirs.

5. July 1604.

Ordains the hail Foldis of the countrie to bring in Ormie Olawsoun, quherever he may be had, to the Lating-Court next to cum, to be accusit upon stowth; and Jhone Wishert, Fold, to bring in the haill dity agains him, be the advice of the haill perischin, and Androw Wishert, Fold, to do the like in his perischin.

6. August 1602.

Succession.] The quilk dai compeirit David Reid, and desyrit the Judge and the Assise's testimonial, gife Magnus Flett and Geillis Keillo wes lawfullie mareit or not, and gife Francis Flett was lawfullie gattin upon Geillis be the said Magnus or no; unto the quhilk the haill Assise answerit, That thai knew thir saidis persounis to be lawfullie marreit, and that the said Francis is thair lawfull begattin soun; upon the quhilks the said David askit actis of Court.

1. July 1603.

The quhilk dai compeirs Magnus in Dafirthe, and alledgit that he had guid rycht and titil to ane brotheris pairt of land—(see my extracts from the law-book of Norway*)—lyand in Grungzervo, with houses and pertinents thair of, extending to 2 mark land, and thairfoir protestit that he might have place to persue the samen as law beirs.

* I have not been able to discover these extracts from the law-book of Norway which Mr M'Kenzie often refers to.—A. P.

13. July 1604.

Jhone Dawick, Fold of Zell, being accusit for usurpatioun of the Kingis authoritie, in halding of shewnis and airffis (i. e. divisions of men's lands and goods amongst the children or next a-kin,) without ony commissioun: compeirit and past fra the rigor of law, and submittit himself in the Judgis will, likeas the Judge acceptit him in will thairfoir.—Here are several other instances, not only of Fouds being accused for the same very cause, but, in all penal cases, of the party's submitting to the Judges's will, or, as it is sometimes expressed, to the Judge's amerciament.

3. July 1604.

Regulations.] It is statut and ordainit, at my Lordis command, (who was himself in judgment at the time,) that the haill inhabitants within the parochin of Quhitness and Weisdale, as well haifeing land as moveabil, pai ane shewnd-ox, quhilk is callit the sesing ox, or, at the leist, the best gripe, according to the auld use; and this to be payit to my Lord and his chamberlains zeirlie, under the pain of poynding.

It is statut and ordainit that my Lord haife twelf accustomit wodderis and ane ox, according as the rest of the countrie payis, and that the samen be sent in to the Lating this zeir, under the pain of poynding; and ordains the Fold, Poill in Houff, accompaneit with sax honest men, to skaite and stent the samen throughout the parochin, not only for this zeir, bot also for the haill byrunnis in tyme cuming, as he will answer thairupon.

5. Ditto.

It is statut and ordainit that nane within the parochin (of Aithsting and Sandsting in Waiss) sell ony of thair oxin to Duchmen, stranger, or utheris out of the countrie, fra this furthe, ilk persoun under the pain of 40 libs. toties quoties.

16. ditto.

William Gairdy, Fold of Unst, and the lawryt.man, ar ordainit to cum and brig thair cannis, bwismeirs, and cuttellis, to be sightit at the Lating-Court next, quhiddir the samen be sufficient or not.—This ordinance looks as if in pursuance of a by-law of the Lawting-Court, 24. August 1602, of which in due place.

Lawting, or Supreme Court.] The Circuit-Court being over, that of the Lawting sat next, and very soon after, anno 1602 upon the 16th August, anno 1603 upon the 18th July, and anno 1604 upon the 20th August, lasting each year about a week only. At this time it held at Scalloway-Banks, but formerly it seems to have sit at Tingwal, to which it appears to have given that name, Ting being a Danish word signifying *forum judiciale* a court of justice, and Wal, or Wald, signifying fenced, as if that were the place where the head-court (as

it is also called,) used to hold or be fenced. So says the bishop of Man, in his description of that island, published by Dr Gibson in his English edition of Camden: "There (says he) the Supreme Court is called the Tinwald, from the Danish word Ting, i. e. *forum judiciale*, a court of Justice, and wald, i. e. fenced. It is held on a hill near the middle of the island, and in the open air." And Dr Sibbald informs us, in his additions to Camden's Account of Shetland, (p. 248 of my folio collections,) that it was in the holm beneath the manse of Tingwal, which is yet called Tinga-Holm, or the Court-Holm, where the great Foud, for so he calls the law-man, once a year convened the landed interest upon the publick affairs of the country, and where they sat (continues he) in the open fields in the Lawting. Their sederunts are entered in this manner: The Lating-Court of the countrie of Zetland, callit the principal and head-court thairof, haldin (when the Earl himself is present, as an. 1602 and 1604,) be an nobill and potent lord, Patrick, Erle of Orknay, Lord Zeitland, Justice-general and Sheriff-principal of the samen, and Mr Jhone Dishingtoun, his depute, at the Castle of Scalloway-Bankis, the 20th day of August 1604: The suits callit, the court lawfully fencit, the assise chosen, sworn, and admittit; and this court is appointit to be current for the dyis of this owk, and forder, enduring my Lord's guid will and pleasor."—Then follow the names of the jurymen, who the first year are 28, the second 19, and the last year 22 in number, after which are taken down the minutes of Court in the same way as before the circuit, the causes preferred in both being also much alike, except in three instances, viz. the power of hearing appeals, of determining men's properties, and the making of general by-laws, which seem all peculiarly to belong to the Lawting. The following instances will serve for specimens:

24. August, 1602.

Actions Civil.] The quhilk day, anent the actioun and claim of four barrellis buttir perswit be Androw Giffart of Woddersta agains James Chalmer in Vaiss, delyverit be the said Androw's wyfe in his absence to the said James, to be carreit to Birroun, for the payment of the land-meils, dettis, and dwties restand and awand be the said Andrew Giffaird to the Lordis of Norroway: Compeirs the said James, and confest the receipt of the said 4 barrellis buttir, and also that he carreit the samen to the said toun of Birroun, to the use and errand foresaid; alledging that upon necessity he sauld the samen for out-red of the said Androw's ship; which was repelled, and he ordained to pay back the butter, or ten dollars for each barrel, reserving place to pursue for his advancements upon the ship, as law beiris.

19. ditto.

Actions Criminal] In an action against Adam Sinclair of Brow for wrongous and violent intromission with goods of a broken Dutch ship, without leave of the owner, or any commission from my Lord his deputes, or the Foud of the parish; "the Assise taking this to consideration, and trying him to have committit great wrang and oppressioun thairinto, thai all in ane vote decernis the said Adam, with his haill moveabill guidis and gere, in my Lordis will thairfoir, in exampill of utheris, reserving place to satisfy the partie."

23. Ditto.

In another action of Robert Sinclair of Campston and Edward Scollay of Strynes, against the above Adam Sinclair of Dorow, as art and part in the slaughter of Matthew Sinclair of Ness, it was found that the night before the slaughter the said Adam gave up friendship with the deceased, and after the slaughter intercommoned with his own servant, the actual doer of the slaughter, whom he also furnished with money and other necessaries for carrying him out of the country: "Quhair-unto the Assyse taking long and mature deliberatioun, be the inspectioun of the chepturis of the law-buik, and practicks of the countrie in sic caices, and the haill premises found lawfullie provin, decernis the said Adam's haill moveabills, guidis, and gere, with his haill heritabil landis and possessiouns, to be escheit, and himself beneist the countrie within the space of 15 dais, and gif he beis apprehendit thairaftir, to be tane to the Heiding-hill of Skalloway-Bankis, and thair his heid to be tane and strukin fra his bodie, in exampill of utheris."

19. Ditto.

Matters of Succession and Inheritance.] Compeirs Edward Scollaw, as procutor for Hew Sinclair, and protestit that quhat he is procedit in favours of Margaret, Katherin, and James Sinclairis, the bairnis of Vyea anent the airff, (division) appointit to be haldin at Vyea the last zeir, for divisioun of the landis and moveablis airt be thame after thair umquhil fathir, that the samen sall na wayis be hurtfol or prejudicial to the said Hew anent the landis coft and recoverit be him fra Francis Sinclair, thair eldest brother; and thairupon tuik instruments.

The quhilk dai, anent the actioun and caus persuit be Margrete Murry, oy to umquhil Niager William's-dochter, spous to umquhil Turberie of Steindale, heretrix of the landis underwritten, and Hierome Umphray, hir spous for his entres agains Jhone Murray of Staindaile, and Robert Murry, his soun, anent

the richt and tytil of 6 mark land uthel, lyand in the town of Gruting, 6 pennies the mark, within the parochin of Sandsting, disponit be the said umquhil Niager to the said Margret Murry, hir oy, in hir minoritie: Compeirit Hierome Umphray, and pruvit sufficientlie the said umquhil Niager to haif conquest and giftit the foresaid 6 mark land, and disponit the samen to her said oy, and placit her in possessioun thair of, be casting of peatis and uplifting the dettis and dwties thair of in hir name: Compearis the said Jhone Murray and his soun, with thair procurator, Andrew Hawick, and alledgit that the said 6 mark land of Gruting was the heid-buil, (i. e. precipuum) and could not be giftit nor disponit fra the principal air: Quhilk alledgeance was found relevant; and thairfoir assignis thame to preife the samen at the next Lating, this being the first dyit of the actioun, and than justice to be ministrate in the said matter as law beiris; and in caice the samen beis provin to be the heid-buil, the complainer to have als meikle als good uther land in ane either pairt, according to the use and consuetude of the countrie.—See my extracts from the law-book of Norway, with which this judgment seems exactly to correspond.

23. Ditto.

Anent the actioun and caus of landis and moveabils perswit be Arthor Sinclair, procurator for Katherein Symon's-dochter, sister to Magnus Symon's-soun, agains Walter Leisk in Wo: compeiris William Ballentyne, proctor for the said Walter, and alledgit that the precept producit in the said caus to be general, not meiking mentioun of the landis and moveabils in particular, quhat sauld be claimit: Not the les the Assise decernis the said Walter Leisk to hald ane airff at the house of Wo, in presence of the deput to be appointit be my Lord, and 12 honest men of the parochin, for division of all lands and mowabils pertening to the said Magnus Symoun's soun, hir eldest brother, to the effect the said Katherein may be placeit and acknowledgit with hir awn pairt thair of, according to the lawis of the countrie, all parties being lawfullie warnit thairto, and this to be done within the space of ane monet, under the pain of 40 libs.

21. July 1603.

Anent the action and caus perswit be Alexander Cheine, one of the sonis and airis of umquhil Mr Robert Cheine of Urie, agains Thomas Cheine of Wala, his eldest brother, for making ane airff and division of all landis and moveabils appertaining to the said umquhil Mr Robert, and Margaret Strang, his spous, amangs the haill airis, to the effect that the said Alexander may be kend to his part thereof, after his father and modder, as at mair length in the lybellit precept, duly execute and indorsit to this day, is contenit: Quilk being considerit be the Assyse in presence of the said Thomas, ordainis

him to make an lawfull airff and divisioun of all landis and moveabils appertaining to the said umquhil Mr Robert Cheine and Margaret Strang his spouse, at the airff-house of Norbie, betwix the day and date heirof and the feast of All Hallowmas next to cum; and ordains Arthur Sinclair of Aithe to be judge and deput to the said airff, and to elect and chuse twelff of the maist neutral men within the country of Zetland, be the advice and consent of the haill airis, and, in caice of thair refusal, the said Arthor to elect and chuse the samen himself, for quhom he sall be halden to answer, and to take all thair aiths; ordain- and them to keip ane airff and make lawfull divisioun of all landis and moveabilis appertaining to umquhil Mr Robert Cheine and Margaret Strang his spouse, and divid the samen amangs the airis, and mak every ane of thame, either sister or brother, to be kend to thair awn parts, according to the lawis, use, and consuetude of the countrie; all lawfull and proveabil dettis, with the expences of the airff, being first deducit and tane af the haill; and ordains the said deput to direct his pre- cepts to summon witnesses for declaration of the trewth, under sic pains as he pleise, and to admit the defences and reasones of ilk partie as law will, and minister justice thairinto, as he will answer thairupon.

Regulations and Ordinances.] At Skalloway Bankis, 24. August 1602, The quhilk day it is heavily complenit be the gentlemen and haill commonis within the countrie of Zetland, that where the Dutch merchantis and uthers strangeris repairing within the country, having their cowpis set, and thair tolls resavit for keeping of ane lawfull trade of merchandice, according to use and custom kept of old; not the les thai and every ane of thame brings to the country and sells thair waris with unlawful metts, kanns, bismers, and weights, whereby they are greitly enriched, and the haill inhabitantis depauperate and hurt thereby; thairfoir it is statute and ordainit that na Dutch merchant, stranger, or uther, present or sell any barrel meil containing les nor ten lispunds, and that the rest of thair kanns, bismers, and weights, and cuttels, be usit according to the auld accustomit custom and form of the country; to be sightit and conformit yeirly be the Folds and sax neutral men of ilk parochin and isle within the country; the saidis merchants, under the pain of confiscation of thair schippis and guidis, and the said Folds, in caice of faillie of thair trial, ilk person under the pain of 100 lib. and tinsal of thair office; and the breakers of this yeirly to be given up in ditty, under the pain of perjury.

Also:

It is statute and ordainit, be advice of the Assyse, that nane lie nor traduce ane uther within the countrie of Zetland to my

Lord, in ony pairt to the hurt of his nyghtbor, without sufficient probatioun had; and, in caice he beis foundin to have done in the contrair, for the first lie to tyne his ryght hand and sword, and for the next lie to tyne his moveabils and be baneist the countrie; and this to be extractit (out of the buik, for so it is afterwards said,) be the Folds, ilk ane of thame under the pain of 40 libs. and publisht to the haill commonis of the countrie, that nane pretend na ignorance heirof: And sicklike, that nane lie, raill, nor traduce the Lord or Magistrate of the countrie, either within the countrie or without, frae this forthe, ilk persoun under the pain foresaidis.

Also,

Anent the complaint given in be ane greit number of the gentlemen and utheris the commonis of the countrie, That quhere the Folds and utheris giffs licence and testimonials to a grete number of servantis and utheris, indwellars within the land, to pass off the countrie to uthir partis, quherbe a grete part of the landis of the countrie ar likely to ly ley, without tymeous and speidful remeid be put thairto: Thairfoir it is statute and ordainit that no skipper, merchant, or owner carrie away or transport off the countrie any persoun or persounis in thair schippis, boatis, grete or small, without my Lordis licence or his deputis, frae this forthe; ilk skippir, merchant, or owner under the pain of 100 libs. als oft as thai contravene this ordinance: and sicklike, that na Fold nor uther grant ony licence or testimonials to ony fra this forth, under the pain to be accusit as usurpairis of the kingis authority.

Also,

It is complainit be ane grete number of the gentlemen and commonis of the countrie of Zeitland, That thai are heavily hurt and prejudgit be divers and sundry crafty, malicious, and in-vyous personis within the countrie, quha craftilie begins and intendis thair actions agains utheris befoir the Lordis of Session and utheris Judges out of the countrie, quhairbe the haill commonis are likelie to be wreckit, without tymeous and speidful remeid be put thairto: Thairfoir, for remeid of this, it is statute and ordainit that nane begin or intend action agains uthir within this countrie, either affoir the Lords of Counsell or Session, or ony uther Judge, temporal or spiritual, or rais letters in ony sort outwith the countrie, fra this forthe, unles it be tryit that thai are refusit of justice within the country itself; with certificatioun, in caice thai do, that thai, and every ane of thame qua contravein thir presents, sall tyne the benefite of the lawis of the countrie, and never be hard in ony caus yr. after; and ordainis thir presents to be extractit out of the buik be the Folds of the countrie and isles, and publisht throwgh the haill land, ilk persoun under the pain of 40 libs.

26. August 1602.

Compeiris Androw Mowat of Howgoland, and protestit, in respect of the actis and ordinances maid now, That nane of the inhabitants sould be perswit out of the countrie be ony persoun; thairfoir protestit that he sould na wayis be haldin to answer to ony man's instance without the countrie, in respect of the foresaid act, and thairupon tuik actis of Court; and sicklike Edward Sincler of Builzister protestit, ut supra, and yrupoun tuik actis of court.*

22. August 1604.

Taking consideratioun of the great confusioun usit within the countrie of Zeitland, anent the buying and selling of landis yrinto, continually rememberit be the complaints and supplicatiounis of the commonis of the countrie, to the greit hurt of the common weil yrof: Thairfoir it is statut and ordainit that na person or personis, fra this forthe, either buy or sell ony sort of landis with utheris, without the samen be first offerit to the neirist of the selleris kin, according to the use and constitution of the countrie; and, in caice of their refusall, that the samen be offerit next to my Lord himself, quha is Magistrat and superiour of the countrie, affoir ony uthir, he payand thairfoir as the awners and he can agrie; with certificatioun, in caice of faillie, and contravening of this present act, That the tytills and securities maid or to be maid upoun the saidis landis, with all that followit or may follow yrupon. sall be null and of na availle in all tyme thereafter."

* Here the Lawting of this year seems to end, in which it appears the Earl himself sat as preses, both by the title at the beginning of the Sederunt, and afterwards also by other Sederunts throughout the Session. The unlaws of this year in the Lawting, and all ordained to be levied and poinded for, amount to 1163 libs. besides the confiscations, which were many. From July 3 to August 26, 1602, the pecuniary fines to the King (as it is said,) for petty thefts, slanders, &c. are in number about 200; the confiscations of lands and goods, and perpetual banishment on pain of death, the women to be drowned and the men hanged, or sometimes, instead of banishment, scourgings round the parish kirk on the Suunday, are about 28, and the capital sentences 2; nor do they seem to be fewer any of the following Circuits. The banishments so often inflicted (August 7, 1602,) is said to be into Norway. After the Lawting we have always an abstract of the unlaws of the whole circuit, with the compositions and modifications of same, all to be raised or levied by distress, of which 1163 libs. were the amount in 1602.

TRIAL of PATRICK Earl of ORKNEY, before the
High Court of Justiciary, Feb. 1. 1615.

CURIA JUSTICIARIA, S. D. N. Regis Tenta in pretorio de
Edinburgh, primo die mensis Februarii 1615, per Dominum
WILLIELUM HEART, de Prestoun, militem, Justiciarium.

My Lord Advocat produceit ane warrand of the Counsell,
quherby the Lords underwritten ar nominat and appointit as-
sessours to the Justice, dated the last of Januar 1615, under
form of act.

Assessors to the Justice in this Process.

Alexander Erle of Dumfermi- ling, Chancellor.	Sir John Cockburne of Ormis- toun.
Thomas Lord of Bynning, Se- cretar.	Sir Alexander Hay of Quhit- burgh.
Mr John Prestoun of Penny- cuick, President.	Sir William Levingstoun of Kilsithe.
Sir Gedion Murray of Elibank, Thesaurer-Depute.	Sir Alexander Drummond of Meidhope.
Sir Richard Cockburne of Clerkingtoun.	

All Senators of his Majestie's College of Justice.

Intran.—PATRICK Erle of ORKNEY,

Dilaitit of the treasonable causeing, sending, hounding out,
airt, pairt, taking, command, counsell, devyse, and direction of
unquhile Robert Stewart, his base son, to prosecute and fol-
low out the treasonabill rebelloun latilie committit be him and
his associattis within the cuntrie of Orknay, in the treasonabill
taking and surprizing of the palace of Birsay, the castell of
Kirkwall, the place of the yairds, the kirk and steeple of Kirk-
wall, and remanent his Majesties housses and strenthis within
Orknay, conforme to his dittay producit by our Souerane Lordis
Advocat.

Pursewir—Sir William Oliphant of Newtoun, Knight, Advo-
cat to our Soverane Lord.

Prelocutors in defence :

Mr Alexander King,	Mr Alexander Peiblis,
Mr Thomas Nicolson,	James King,—Advocattis.

Mr Alexander King, aduocat, producit ane warrand of the Lords of Secreit Counsall, for himself and the remanent prelocutors, to compeir this day in defence of the Erle of Orknay for the crymes contenit in his dittay.

The forsaid assessors nominat to concur with the Justice in this process war sworne, aganis quhome na opposition was made be the pannall; quherupon my Lord Advocat asked instrumentis.

My Lord Advocat producit the dittay, and desyret proces aganis the pannal for the treasonable crymis therin contenit.

The dittay be command of my Lord Justice and his assessors being red, and the pannell accusit, be virtew therof, of the several poyntis of treason and lese Majestie mentionat therintill,

It is allegit be my Lord of Orknay and his prelocutor that seing ther ar mony grit and haynous pointes contenit in the dittay, and that the samen war nocht knawin whill now to the pannell, and na copie thereof was gevin to him quherupon the pannell and his prelocutors mycht haif consultit, quhilk aught to haif bene done, desyrit therefore ane tyme to be grantit to the saids prelocutors that thai mycht advise with my Lord of Orkney therupon. It is ansuerit be my Lord Advocat, that the pannell is brocht fra the Kingis waird to the bar, and accusit of crymes committed aganis his Majesties authoritie, quherof he is nawayis ignorant. Na coppie of his dittay sould haif bene geven to him, nor na delay sould be granted in tryal thereof, but conforme to the daylie practique of the judgement quhere ane person chalengit and commitit to waird for treason, and brocht to his tryell, the dittay quhereupon he is accusit is summerlie discussit without delay or continuation.

It is allegit be the pannell, that he was nocht wairdit for this cryme specifiet in his dittay, bot for uther crymes; and this tressone quhereupon he is now dilait and accused is committit during the tyme of his imprisonment: And seing the only caus quhy his prelor. craves this delay to be grantit is allannerlie to confer with his Lordship anent the veritie of the facts lybellit, quhidder he may pleid giltie or innocent; therof desyres, as of befor, ane convenient tyme to be grantit to thame to confer with the Erle therupoun.

My Lord Advocat takis instrumentis of the pannellis declaration that he was wairdit for uther crymes, and that the crymes lybellit was committed sen his wairding.* And as to the con-

* A more despicable quibble than this protest implies, never disgraced the procedure of the most tyrannical judicatory in the world. The pannel's meaning evidently is, that he was imprisoned *on an accusation for other crimes*, which accusation he had all along met with a denial, and a defiance to the proof and which the public prosecutor never ventured to bring to a trial. The plea that "the crymes lybellit was commitit since his wairding," is distorted into an admission also, it would seem, that the crimes charged were

tinuation cravit be his prelor. for ane covenant space na delay sould be granted, in respect his Lordship can pretend na ignorance of the crymes contenit in his dittay, seing he has bene diverse tymes examinat therupon be the Lords of Secret Counsall upon the veritie therof.

The Justice, with the advyse of the assessors, repellis the pannellis alledgeance. But, *ex gratia, grantis ane half hour* to the pannell and his prelor. to be advyset therupon, quhereupon my Lord Advocat askit instruments.

The pannell with his prelor. haifing resavit up the dittay, and removit thameselfis a pairt to the counsell hous to be advyset therupon, returnit within the space grantit to thame for that effect, and declairit that thay wald na wayis impugne or dispute agains the relevancie of the dittay: and as to the veritie of the crymes contenit therintill, speciallie the directions alleget geven to his umquhile sone Robert to practize the Rebellioun lybellit, denyis any sic directioun: and gif any command may be inferrit givin to his son, it was na wayis to commit any fact or deed to the offence of his Majestie or his hienis authoritie, bot to pas over to Orkney and to tak intromission with his Lo. houssis, gudes, and gear, being therintill, upon meir ignorance and simplicitie, na wayis thinking that ony sic command sould infer treasone or any uther cryme or offence aganis his gracious soverane: and therfor fleing fra all forder defence of his awin innocence, hes his refudge to his Majesties grace and mercie; and as of before, craves God and his Majesties pardoun for his oversicht and negligence on this poynt, and in all humilitie and submissoun cumis in his hienes' will for the samyn, and ratifyis his former deposition in everie point.

Assisa.

James Earl of Glencairn.
George Earl of Wentoun.
John Earl of Perth.
Robert Earl of Louthiane.
William Earl of Tilliebairne.
David Lord Scone.
William Lord Sanchur.
John Lord Hereis.
James Lord Torphichen.

Hew Lord Sempill.
William Lord Kilmawers.
John Grant of Frewchie.
Sir Patrick Hepburn of
Wauchtoun.
Robert Arnot of Fairny.
Sir Harie Lyndsay, elder
of Kinfawns.

really committed—whereas the pannel's argument is, that having been committed on a charge of one crime he was not liable to be brought to the bar summarily for other crimes alleged to be committed while he was in waird, in the same manner as a person imprisoned expressly for those treasons. An elliptical expression is eagerly grasped at to justify the disgraceful precipitancy of this trial, without giving the accused a moment's warning to prepare his defences.

My Lord Advocat takis instrumentis of the sweiring of the assyse, and for verification of the dittay uses the haill depositions of the witnesses producit, partlie subscrivit be the parties and partlie be the Lordis examinaturis, speciallie the depositions of the witnesses mentionet in the dittay; produces the letter of tak granted be His Majestie to Sir James Stewart, contening the commission of Sherifship; repeittis the notorie of Mr John Finlaysone's office of Sheriff-deputrie; repeittis the commissioun producit grantit to my Lord Bishop of Orkney, and lykewayes my Lord of Caithnes commissioun, with the three severall lettris direct to Robert Wynrahame yla herauld, and executionis therof; repeittis the criminall proces led and deducit agains umquhil Robert Stewart and remanent persones his complices, with the sentence and doome pronuncet agains thame, beirand that the haill crymes therin contenit war done and committit be thame and thair complices of my Lord Orkney's speciall direction and command; repeittis the twa missives written be John Scherp at my Lordis command as he affirmes, quhilkis war gottin upon Duncan Mitchell; repeittis the warrand direct be my Lord to establish the keeping of the Castell of Kirkwall in the persone of Patrick Halcro; repeittis the depositione of Patrick Halcro and the said umquhill Robert theranent; produces the band subscrivit be the cuntrie people for taking eafald part with Robert in the former rebellion practizet be him in Orkney; produces ane charter grantit be my Lord, in favouris of Patrick Halcro, subscrivit at the Castell of Dumbarton, of certain lands in Orkney, for taking part with the said Robert Stewart in the said rebellion, albeit that caus be nocht expressit in the said charter; repeittis the judiciall confession maid be my Lord upon the twelfth day of Januar last, quherin he has confessit that the Castell was surprysit be Robert his son, be his direction, and the said Erlis cuming in will for the samyn; repeittis the haill depositions maid be Robert before he was pannellit, his deposition maid the samin day that he was pannellit, his judiciall declaration upon pannell, and his declaration upon the scaffold, with the depositions of Patrick Halcro, James Lyoun, John Scherp, Duncan Mitchell, Duncan M'Clarey, Barnard Stewart, Mr Mitchell Mair, and in speciall thair depositions maid to the Lords of Secret Counsall, beingconfrontet with the Erle; repeittis his Lo. cuming in will this day, and speciallie his ratification of his former cuming in will upon the twelf of Januar; and therupon askit instruments; and protestis for willfull error agains the persones of assyse, and that thai sall incur the lyke cryme and punishment of treasone quherupon the pannell is accusit gif thai acquit him thereof.

CONVICTION of PATRIK Erle of ORKNAY.

The quhilk day Patrik Erle of Orknay, &c. being presentit upon pannell, dilaitit, accuset, and persewit be Sir Williame Oliphant of Newtoun, Knyt. aduocat to our Souerane Lord for his Hienes' intereis, of the seuerall crymes of treasone and lese Majestie at lenth specifeit and set down in his dittay producet be our said Souerane Lordis Aduocat agains him, quhairof the tennor followis: Patrik Erle of Orknay, &c. ze ar indytit and accuset, Forsamekill as certane and sure informatioun being gevin to our Souerane Lord the Kingis most excellent Maiestie, and to the Lordis of his Hienes Previe Counsall of this Kingdome, off the manyfold iniureis, tyrranneis, and haynous oppressiones practizet be you vpone dyuers his Maiesteis peceable and guid subjectis dueland within the boundis of Orknay and Zeitland, lyk as for the better stay of the quhilkis your former tyrannie and oppressioun fra haifing forder course, and for the mair exact and substantious tryell of your guiltines yairof, (ye,) be his Maiesties speciall directioun, being committit to waird within the castell of Dumbarten, to haif remainit yairin quhill ordor had bene tane with you as appertenit, it is of verritie that ye upone occassioun of the restrante of your former libertie freitting in your awin mynd yairat, nocht only during the tyme of your wairding devyset all indirect and vnlawfull meanis and moyane for your brek and escaipe furth of ye said waird, albeit skarrit and hinderit throw the fidelitie of your keiperis fra doing yairof: Bot lykwayis maist tressoneabillie and vndewtiefullie schaiking af your allegiance and dew obedience to our said Souerane Lord, to quhais bountiefull clemencie ye war sa gritlie bund, ye maist tressonabillie plottit, devyset, and concludit the laitt tressonabill rebelloun, vproir, and insurrection, prosecute and followit furth be your devyse and directioun, within the said cuntrie of Orknay; in sua far as umquhill Robert Stewart, your base sone, eftir mony thraitningis and minatorie speiches vtterit be you againis him for his simplicitie in randeriing and overgeving of his Maiesteis castell of Kirkwall to James Bischope of Orknay, quha than had comissioun of his Maiestie to comand all castellis, houses, and strenthis within the boundis of Orknay and Zeitland; and quha, be vertew of the same comissioun, acquyret possessioun of the said castell of Kirkwall and remanent houses and palices within the boundis abone writtin; as also, eftir ye said Robert his reconsiliatioun with you agane vpone conditioun that he sould vndertak quhatsoever disperat course ye sould command him to follow, of your speciall causeing, sending, hounding out, command, counsell, devyse and only directioun, quhome ye also furneist with perticuler iniunctiones set down be you in writ how he sould carie and behave himselffin that your tressonabill intendit interpryse.

He in the moneth of May, or yairby, last by-past, past furth of yir partis to the cuntrie of Orknay, and yair haifing forgadderit with Patrik Halcro, quha also was speciallie imployit and directit be you to aid and assist him in that vnhappie bussines, and to quhome ye gaif ane securitie in writ of certane landis, rowmes, and steidingis vpone conditioun that he sould tak part with the said Robert your sone yairintill, first according to your directioun, with the assistance of vmquhill Thomas Blak, Archibald Murray, Andro Mairtene, Thomas Layng, Alexander Legget, and dyvers vtheris yair rebellious associatis. The house and place of Birsay was tressonabillie surpryset and tane in be thame, and Barnard Stewart, keiper of the samyn, was maist violentlie expellit furth yairof; quhilk house yai yairefter fortifeit with muscattis, poulder, leid, airmet men, and all vther necessar furnitor and prouisioun, and held and keipit ye samyn maist rebelliouslie and tressonabillie aganis Mr Johne Fynlaysone, Shireff-Depute of Orknay, nochtwithstanding of the charge geuen in his Maiestieis name and authoritie to thame for rander-ing and overgeving the said hous vnder the pane of tressone; as also, the said Robert your sone, for performeance of your command and directioun gevin to him, maist tressonabillie convocat and pat in airnes ane grit number of the cuntrie people, to quhome captanes and commanderis war chosin, and at tua seuerall wappone schawingis musterit out togidder to the number of nyne-scoir persones. Ane band was at the samyn tyme maist tressonabillie formet and maid; and eftir solemne aithes gevin vpone yair suordis, the said band was markyt and subscriyvit, quhairin thay war bund, vnder the pane of periurie, to tak eafald part with the said Robert in all your former tressonabill intendit interpryses, prescryvet be you to him, aganis all persones quhatsumeir without exceptioun of his Maiestie or his Hienes royall authoritie: And sicklyk, without feir of God, or regaird of his Maiestie's lawis, ane perticuler directioun and iniunctioun being prescryuit be you to your said sone, at his cuming to the said cuntrie of Orknay, to put the said Shireff-Depute be vnlawfull meanis out of the way, to the effect he being cuttit af, your said sone and his complices mycht the mair easilie obtene possessioun of the said castell and vtheris houses keipit be him; for effectuatting of the quhilk poynt of your commissioun, the said Robert your sone maist tressonabillie convocat to himself to the number of fyftie souldiers and airmet men, all bodin with hagbutis, muscattis, poulder, leid, and vther weirlyk prouisioun, came forwardis togidder in battell array, from Birsay towardis ye said toun of Kirkwall, of purpois, conforme to your bludie determinatioun, to have murthoret the said Shireff-Depute within his awin ludgeing; and haifing cum to the Bow a Croce, thay yair ressaut adverteisement of the Shireff's being within the said castell: Sua that yai finding yameselfis yairby dissapointet of yt wicket resolutioun, thay

yair dischargit yair volie of muscattis, and reterit thameselffis for that tyme : lykas schortlie yaireftir, conforme to your speciall directioun gevin be you to your said sone, he with his rebellious associattis came forwardis in battell array, with sounding of trumpettis, touking of drummis, ensignes displayit, and with all maner of weirlyk prouisioun, to the said toun of Kirkwall, quhair yai maist tressonabillie tuik in and surpryset the Place of the Yairdis, the kirk and steiple of Kirkwall, persewit and assadget the castell yairof, and tuik in the remanent his Maiestei's hous within the said toun, be plane force and violence, and maist tressonabillie pat violent handis on the said Mr Johne Fynlaysone, Shiref Depute, and on Barnard Stewart, quhome thay tuik and apprehendit, and keipit in strait firmance and captiuitie as captiues and prissoneris within the castell of Kirkwall, be ye space of fyve dayes or yairby, and yaireftir convoyit thame to certane crairis or schipis to be transpoirtit south to sic places as thay appointit ; thay being our Souerane Lordis guid and faithfull subiectis, doing qvhat in thame lay to haif stayit ye course of your rebellious ; and yaireftir, thay, according to your directioun, furneist the said castell and remanent houses and strenthis with men, munitioun, poulder, leid, and all vther weirlyk prouisioun, for keiping yairof. Ane crair, according to your directioun, was directit to Burrey in Norruay, for hame-bringing of poulder and bullet for the better halding of the said castell ; lyk as the said Place of the Yairdis, the castell, kirk and steiple of Kirkwall, for obedience of your former directioun was maist tressonabillie keipit and halden out aganis George Erle of Caithnes, his Maiestie's leutennent and commissioner. Aftir ye charge gevin to the said vmquhill Robert, your lawful sone and his rebellious associattis, keiperis yairof, be Robert Wynrahame his Maiestie's herald for randerig and overgeving of the samyn to the said leutennent vnder the pane of tressone, the said leutennent and his companie, cled with his Maiestie's commissioun and authoritie, war maist tressonabillie resistit and withstuid with schotis of hagbuttis and muscattis in execution of ye said comissioun, at the Carnes and at ye Bawfield, be ye said vmquhill Robert and his souldiors, quha musterit furth of the said toun aganis him te ye number of fyve hundreth airmet men : and siclyk Robert Wynrahame his Maiestie's herauld, in his passing to the mercat croce of Kirkwall, cled with his Maiestei's displayit coit of airmes, thair to haif chargit with sound of trumpet, ye said vmquhill Robert your sone and his rebellious cumpanie to haif randerit the said castell, kirk, and steiple Place of the Yairdis, and vtheris houses, keipit be thame, conforme to his Maiestie's lettres and charges direct with the said herauld for that effect, was, with the trumpeter and witnesses that accompaneit him, nocht only maist tressonabillie impeidit and stayit in ganging to the said croce to the effect foirsaid, bot lykwayis ye said herauld, trumpeter, and witnesses war maist

tressonabillie tane, apprehendit, and convoyit as captiues and prissoneris be the saidis tratouris and rebellious people, to the Place of the Yairdis, the said heraldis coit of airmes maist tressonabillie riven, his Maiesteis lettres tane frome him and keipit, and the said herald with the trumpeter and witnesses war keipit as captiues within the said place be the said vmquhill Robert and his complices, maist tressonabillie, be the space of nyne houris; and nochtwithstanding of dyuers schotis of ordinances schot at the said castell, the samyn, with the said kirk and steiple of Kirkwall and Place of the Yairdis, war maist tressonabillie keipit and haldin aganis the said leutennent, and he maist tressonabillie invaidit and persewit with dyuers schotis of hagbuttis and vther munitioun schot furth agane be thame af ye castell and steiple aganis him and his company; dureing the tyme of the quhilk assault maid to the said castell be the said leutennent James Richiesone, William Irving, Andro Adameson and William Robertson, his Maiesteis faythfull subiectis, war maist tressonabillie slane be the said vmquhill Robert and his rebellious associattis, within the said castell, and lykwayis James Kneilland, Andro Purves, William Flemyng, and Alexander Sudderland, war crewallie hurt and lamet, thay being all his Maiesteis subiectis, imployit in his Maiesteis seruice, attending vpon the said leutennent in executioun of his said commisioun; the making of the quhilk tressonabill vproir and rebelloun within the said cuntrie of Orknay, the tressonabill surpryseing and taking in of the said place of Birsay, Place of the Yairdis, castell of Kirkwall, kirk and steiple yairof, and remanent his Maiesteis houses within ye said cuntrie of Orknay, keiping and halding of the samyn in manner foirsaid, and haill tressonabill practizes following yairuponn, war haillilie plottit, devyset, forget, and concludit be you, and the samyn war maist tressonabillie put in executioun be the said vmquhill Robert your unlawful sone and his rebellious companie, off your speciall causeing sending, hounding out, airt, pairt, taking counsall, devyse, and only directioun, lyk as dyuers letteris and messages past betuix you and ye said Robert your sone eftir his tressonabill taking of ye said place of Birsay, incurrageing him yairby to keip the saidis houses, and to follow furth ye rest of your iniunctiones gevin to him in that your tressonabill interpryse: lykas ye said vmquhill Robert your sone, and dyuers utheris his associatis being examinat vpoun ye veritie of the premises in presence of the Lordis of His Maiestie's Previe Counsell, be your depositiones, hes grantit and confessit that ye said rebelloun was first intendit be you, and prosecute and followit furth be your speciall directioun and command, gevin to the said Robert, your sone, and Patrik Halcro, to aid and assist him yairintill; and siclyk, be the depositiones of James Lyoun, John Scherp, Duncan Mitchell, the said Patrik Halcro, and dyuers utheris persones examinat in that matter, your guiltines of the said rebel-

lioun it cleirlye verifeit and provin, lykas the said vmquhill Robert your sone the day that he was accuset and persewit for the tressonabill crymes abonewrittin, befoir he was presentit, vponne pannell being re-examinat of new, in presence of dyuers Lordis of his Maiesteis Previe Counsell, nocht only maist constantlie abaid at all his former depositiones maid be him concerning that rebelloun, bot also eikit yairto, that ye gaif to himselff ane peticuler warrand in writt to pas to the said interpryse, and to recover the said castell agane vnder his power; as also that ye delyuerit to the said Patrik Halcro ane securitie in writt, of certane landis and rowmes, vponne condition that he sould interpryse the recoverie of the said castell and assist Robert yairintill: quhilkis confessiones and declarationes was also ratifeit and renewit be the said Robert vponne pannell in presence of the justice and assysoris afoir his convictioun, and vponne the scaffald in presence of the haill people, immediatlie befoir his executioun; lyk as the said Robert your sone and his associattis was convict and execute to the daith for the haill tressonabill crymes abone specifeit, as done and committit of your speciall causeing, counsell, and direction, as ye proces of yair convictioun heirwith producet beiris; and finallie your L. selff, being presentit vponne the tuelf day of Januar last, in presence of dyuers Lordis of his Maiestie's Previe Counsell of this kingdom ye yair be your depositioun subscrivit with your hand, acknowledgedit and confessit the geving of the direction be you to your vmquhill sone Robert, and vtheris his associattis, for ye surpryseing, taking, and detening of the said castell of Kirkwall, craveing God and his Maiesteis pardoun for that your offence, and in all humilitie and submissioun offerit yourselff in his Maiesteis will for the samyn, as your depositioun herewith producet mair cleirlye testifeis; quhairin ye as the principall devyser, fortifiear, steirer vp of ye said vmquhill Robert your sone to the practiceing of the former rebelloun, hes committit oppin and manifest tressone aganis our Souerane Lord the Kingis most Sacred Maiestie, and his royall authoritie, and ye ar airt, pairt, red, and counsalar of the haill tressonabill practizes abonewrittin, for the quhilk ye aucht and sould be demanit and puneist as ane tratour to the terroure and example of vtheris to abstene fra the lyk heireftir. Eftir reiding of the quhilk dittay and accusatioun of the said Patrik Erle of Orknay, be vertew yairof of the crymes respectiue abone specifeit, the iustice referrit the said dittay to the tryell of the honorabill persones of assyse vnderwrittin, quha war lauchfullie sumond to that effect, thay ar to say, James Erle of Glencairne, George Erle of Wentoun, Johnne Erle of Perth, Robert Erle of Louthiane, Williame Erle of Tilliebardin, David Lord Scone, Williame Lord Sanchair Johnne Lord Hereis, James Lord Torphichen, Hew Lord Sempill, Williame Lord Kilmaweris, Johnne Grant of Freu-

chie, Sir Patrik Hepburne of Wauchtoun, Knight, Robert Arnotte of Fairny, and Sir Harrie Lyndsay, elder of Kynfaunes; quhilkis persones of assyse being chosin, suorne, and admitted, eftir accusatioun of the said Patrick Erle of Orknay of new agane be dittay, in presence of the said assyse, of the hail tressonabill crymes aboue specifeit, quhilk was verifeit be production of dyvers depositiones, writtis, and ither probatioun uset be our said Soverane Lordis advocat, and producet for that effect, speciallie be the said Erle of Orknay his awin deposition, maid be him in that matter upone the twelf day of Januar last, quhairin nocht only he hes confessit the geving of direction to his sone Robert for surpryseing, taking, and deteneing of the said castell of Kirkwall, in manner specifeit in the dittay, bot lykwayes in all humilitie cam in his Majesteis will for ye samyn, thay removet altogidder furth of Court to the Counsal Hous, and yair be pluralitie of voettis electit and choset the said James Erle of Glencairne in chancellor of ye said assyse, ressonit and voittit upone the pointis of ye said dittay, and being ryplie and at lenth advyset yairwith, togidder with the hail depositiones and vther writtis and probationes producet in ye said matter for verificatioun yairof, thay reen-terit agane in court, quhair thay all in ane voice, be themouthe of the said James Erle of Glencairne, chancellor, Fand, pronouncet, and declairit the said Patrick Erle of Orknay to be giltie, culpable, and convict of the tressonable rebelloun committed be umqule Robert Stewart his bast. sone and his rebellious associattis, within the cuntrie of Orknay, quhilk was done and committed be the said vmqule Robert and his complices, off the speciall causeing, command, devyse, and direction of ye said Patrick Erle of Orknay his father, in forme and maner specifeit in the dittay and depositions producet be our said Souerane Lordis Advocat for verificatioun yairof, speciallie conforme to the said Erle of Orknay his awin deposition producit and subscrivit wt. his awin hand, and this day ratefiet and renewit be him in judgement, ffor the quhilk he is cum in his Maiesteis will. For the quhilk caus, the Justice, be ye mouth of Johnne Dow, dempster of court, ordanit ye said Patrick Erle of Orknay to be tane to the mercat croce of ye burt. of Edr. and thair, upone Fryday nixt the third of this instant, betwix twa and thre houris efternone, his heid to be strukkin frome his body, and all his landis, lordschipis, leving, heritages, takis, steadings, rowmes, possessiones, offices, dignities, rentis, guidis and geir to be forfeit and escheit to our Soverane Lordis use, as culpable and convict of the saides tressonabill crymes quhilk was pronouncet for dome.

EXTRACT from LAING'S HISTORY of SCOTLAND,
Book I. p. 65.

The Orkney Islands "were conferred by Mary on Robert Stewart her illegitimate brother. His son, impoverished by expensive buildings, and attendance at court, endeavoured, in a remote country, where his authority was subject to no controul, to repair his former wants by oppression. It is probable that his oppression was exaggerated in the complaints of the islanders, or aggravated by the acrimonious report of their Bishop; but his possessions excited Dunbar's cupidity, the episcopal revenues which he had obtained from the crown, were solicited by the prelates, and the King descended to the mean and unjust expedient of purchasing a large mortgage with which his estates were attached. After an imprisonment of three years, as he still refused to resign his right to the redemption of his property, his estates were seized, and his subsistence reduced to a daily allowance suitable neither to his rank nor to his necessities. As his release was hopeless, and his ruin appeared inevitable, he was driven at length to the most desperate extremes. His son, the bastard of Orkney, was instructed to take arms, and to regain possession of the castle of Kirkwall, an ancient fortress of considerable strength. But his own escape was prevented by his guards; the castle was reduced by the Earl of Cathness, and the bastard surrendered on the pious condition that no torture should be employed to extort a confession of his father's guilt. The father was convicted on the son's confession. His descent from a brother of the unfortunate Mary, gave him the strongest claim to the compassion of James; but as Somerset had succeeded to Dunbar's expectations of his estate, every avenue to mercy was intercepted."*

No. III.

EXTRACTS from the GENEALOGY of the Earls of
SUTHERLAND,—page 248.

The Earl of Sutherland visits Orkney.

1602.—In the moneth of August 1602 yeirs, John Earle of Sowtherland, being accompanied with his brother Sir Robert Gordoun, Houcheon Macky, the Laird of Assint, and diuers other gentlemen, went into Orknay to uisit Earle Patrick. They shipped at Cromartie, in the Earle of Orknay his warre-

* Calderwood's M. S. VI. 557. 40. Johnst. 486. 9. 3, 505. State Business M. S.—Laing's History of Scotland.

ship, (called the Dunkirk,) and landed at Kirkway, wher they wer honorable receaved, and hartelie interteyned by Patrick Earle of Orknay. Having stayed eight dayes at Birsay, and eight dayes at Kirkway, and having concluded a band of friendship with Earle Patrick, they imbarked agane, and so returned home into ther owne cuntries. In this voyage Robert Gordoun, (the eldest sone of John Gordoun of Kilcalmkill,) sickned, and died shortlie afterward; a young gentleman of good expectation.

The Earl of Orkney visits Sutherland,—page 252.

1604.—The yeir of God 1604, Patrick Earle of Orknay came into Southerland, to visit Earle John, and was then Godfather to Earle John his eldest sone, who was called Patrick; bot the chylde livid not long. The Earle of Orknay having passed his tyme a while at Dornoch, honorable interteyned with comedies, and all other sports and recreations that Earle John culd mak him, he returned into his own cuntry.

The Erle of Cathynes sheaveth the heads and beards of some of the Earle of Orknay his Servants,—page 258.

1608.—The yeir of God 1608, ther was some appeirance of trouble betwene the Earles of Cathynes and Orknay, by reasone that, upon some preceeding discontent, the Earle of Cattynes had now caused apprehend some of the Earle of Orknay his servants, who were forcid to land in Cathynes by a contrarie wind and vehement storme of weather. First, the Earle of Cathynes maid them drunk, then, in a mocking iest, he causid sheave the one syde of their beards, and one syde of their heads; last of all, he constrayned them to tak ther weshell and goe to sea in that stormie tempest. The poor men fearing his farther crueltie, did choyse rather to committ themselves to the mercie of the sensles elements and raging waves of the sea, than abyde his furie; so they entered the stormie seas of Pentlayn firth, (a fearfull and dangerous arm of sea betwene Cathynes and Orknay,) whence they escaped the furie thereof by the providence and assistance of God, who had compassion on them in this lamentable and desperat case, and directed thir course so that they landed saiflie in Orknay. This affront and indignitie was highlie taken (not without reason) by the Earle of Orknay, who complained therof to the King and his counsell. His Majestie did write to the Councell in Scotland to punish the Earle of Cathynes severlie, after due tryal, as having committed a fact against his authoritie; but when both the Earles of Cathynes and Orknay came to Edinburgh, readie to inform one against another, they agreid all their private quar-

rells by the mediation of friends, least they should revile too much of eithers doings; so this controversie was past over with silence, and some acknowledgemint was maid by the Earle of Cathynes to the Earle of Orknay, as a satisfaction for abusing his servants.

Ane Insurrectioun in Orknay,—page 299.

1614.—In Julie, in the yeir of God 1614, Robert Stewart, (the base sone of Robert Earle of Orknay,) assembling a company of men, made some insurrection in that cuntry, and took the castle and the steiple of the church of Kirkway, becaus (as he alledged) such conditions were not performed as the Bishope of Orknay had promised vnto him when the said castle was rendered be him vnto the Bishop, the yeir of God 1612, which fort he did then hold and keip in behalf of his father the Earle of Orknay. The Earle of Cathynes was now in Edinburgh, in the month of July 1614 yeirs, not onlie for this particular betwein him and the Earle of Southerland his friends, but also for some ryot which the Earle of Cathynes had committed against Lord Forbyse his servants at Dunbeath, which lands had then latelie fallen vnto the Lord Forbyse, by the death of George Sinclair of Dunbaith, who had married the Lord Forbyse his sister, and had, before his death, given the heritable right and title of his estate and living unto the Lord Forbyse, whereat the Earle of Cathynes was much displeased, because that Dunbaith (being the surname of Sinclair) did not make Earle George himself his successor, which he expected, by reasone of ane alledged intaile. And now being frustrat thereof, he went about, by oppression, to drive the Lord Forbyse from their lands, as, God willing, you shall heir afterward.

The Councell of Scotland did assemble to consult whom they should send to Orknay to suppryse this trouble and insurrection latelie begun their. The Earle of Cathynes sued and laboured much to be employed in that service, which he did for three causes: First, that he might thereby be equall with such injuries as the Earle of Orknay had done vnto him before, and to revenge old quarrells vpon the inhabitants of Orknay, for killing his great-grandfather, the yeir of God 1529, as I have shewn already, page 102. The next cause was, that by this imployment he might shift of this action and ryott which the Lord Forbyse had intended against him. The third and cheifest reasone which moved the Earle of Cathynes to sute for the imployment so earnestlie was, that by this service he might procure vnto himself some favor at court, thereby to revenge his late quarrell against the house of Southerland, having left no other means vnattempted. The Councell granted the Earle of Cathynes this imployment, becaus he did vndertake the same without great charges to the King. So, in the month of

August 1614 yeirs, he assembled some soulders at Leith, and had also some pieces of ordinance delyvirid vnto him out of the castle of Edinburgh, with which he imbarqued at Leith, (accompanied with James Law, Bishop of Orknay,) and landed at Kirkway; then Earle George sent hastily into Cathynes for some of his owne cuntriemen who came into Orknay, under the conduct of Henrie Sinclair, Earle of Cathynes his bastard brother. The steiple of the church of Kirkway was first besieged, which after a little time was yielded; then the Earle of Cathynes went about to demolish and throw down the church; bot he was with great difficultie hindered by the Bishope of Orknay, who wold not suffer him to throw it down. Robert Stuart and his associats, (not exceeding sixtene in number at this tyme,) had suffered the Earle of Cathynes, without impediment, to be master of the steiple, and so they cast themselves tumultuouslie into the castell, which they had formerlie fortified, as the dungeon and fortress of their last fortune.

After the castell had been a while beseiged, and that many hundred shot of cannon had bein delashed at it in vain, without any effect, they which were within the fort fell at variance among themselves. Robert Stuart was resolved to hold out, and not to render the house to the Earle of Cathynes. Patrick Hacro (the author of this rebellion,) persuaded him to the contrary; whereupon Robert Stuart yielded at last, having discovered Patrick Hacro his treasone, by meanes whereof he cud hold it no longer, nor yet save himself; which when Robert Stuart perceaved, though too late, he issued out the next morning with such as wold follow him; choosing rather to render himself then to be delivered up by Patrick Hacro; and as he was rash to attempt such a business at Hacro his persuasion, so he yielded himself without any difficultie upon the Earle of Cathynes his promise to saiff his lyff. Thus having randered both himself and fortresse, the castell was presentlie delyvired by the Earle of Cathynes (according to the Councell's command) vnto the servants of Sir James Stewart, (now Lord Ochiltrie,) who then had the handleing and manageing of the rents of Orknay. Sir James Stewart is the sone of Captane James Stewart, who was once in great credit with the King's Majestie, and was chancellor of Scotland and Earle of Arran, of whom I have made mention pages 177 and 181.

The Earle of Cathynes lost divers of his men at this voyage into Orknay. His bastard brother, Henry Sinclair, went to bed at night in health, bot befor the morning he was benumbed of all his sences, and remained so vntill his death. One of the Earl of Cathynes his men (called Richieson) was slain by the shot of the cannon from the castell as he was drinking a health and scoffing at them which were beseiged. The Earle of Cathynes carried Robert Stuart and his complices by sea vnto

Edinburgh, wher they wer all executed, (Patrick Hacro excepted,) the first day of Januarie 1615. This Patrick Hacro was afterwards in great favor with Earle George, and weil interteyned by him for his services.

The Earle of Orknay was at the very first begining suspected to be the mover of his sone to make the insurrection, vnto whom he had sent a letter to that effect into Orknay; whereunto the Earle was persuaded by Patrick Hacro (being then his servant,) who had now reviled the same vnto the Earle of Cathynes. The Earle of Orknay his secretary, that had written this letter at his master's command, fled into the Netherlands, wher he was apprehended and sent to the King into England. This secretarie being transported into Edinburgh, and their examined, confessed the fact in the Earle his presence. Robert Stuart also being confronted with his father, affirmed that he caused him vndertake the business at Patrick Hacro his instigation, which the Earle of Orknay himselff also confessed at his examination, and submitted himself to the King's mercie; whereupon the Earle of Orknay was put to ane assise, convicted, and executed at the mercat-croce of Edinburgh, the sixt day of February, the yeir of God 1615. Then was the castell and strong fortresse of Kirkway demolished and casten down to the ground, at the King's command. Bot behold the mutabilitie and ficklenes of human things! The Earle of Cathynes (who, with an imaginarie triumph, had brought not onlie the Lord Maxwell bot also the Earle of Orknay and his sone to act the last scene of their tragedies in the world,) was the first nobleman that fortun led next to play his part upon the stage. For you shall (God willing) hear afterwards how he was reduced to a hard pinch, and expelled out of Cathynes for causing burn the Lord Forbes his cornes in Sansitt in Cathynes, and some other misdemeanors, which hath brought his house to a verie low ebb.

No. IV.

LETTERS.

Sir JOHN ARNOT to the Earl of ORKNEY, April 9, 1605.

Part of a Letter.

It grieves me very meikle, and piercis my hairt to hear your L. name bladdit out at the market croice as it is, for even when I was in wryting this letter your L. is chargit at the Gudeman of Ethay's instance, to compair befoire the Counsel, the 7th day of Junii, or thereabout, to answer to his complaints. There is as many complaints made upon your L. (and yet habile without

caus,) that your L. name is made odious to all the people of this country, baith great and small, every one ready to hem to their own evil word as occasion serves. Thomas Swinton, James Annand, and James Crawford, can shew your L. enough heir-of gif they please. I am feirit that it sall move his Majesty to extreme anger against your L., for his Highness is of another kind of disposition nor he has been in Scotland quhen he was hier.

The Bishop of ORKNEY to the KING. *An Original Letter.*

Edinburgh, Nov. 17, 1608.

Sir—May it please your Sacred and Most Gracious Majesty The preferment which I have received of your Majesty's great and undeservd favour to be called and reputed Bishop of Orkades and Zetland; they many great and continual complaints of your Majesty's poor distressed subjects in those isles, my Christian compassion of their miseries, and most specially the sincere affection and reverend regard which I have and ever shall have to your Majesty's high honour and true glory before God and men, both for the time present and to come, has moud me to present upon my knees by this letter, supplying my absence, my most humble and serious supplication, in favour of this distressed and oppressed people, That it will please your Majesty's great wisdom, and royal power and authority, some comfort and relief may be provided and procured unto them. Alas! dear and dread Sovereign, truly it is to be pitied, that so many of your Majesty's subjects are so manifoldly and grievously oppressed, some by ejection and banishment from their houses and native soils, others by contorting the laws and extorting their goods, the most part being so impoverished that some of them neither dare nor may complain, but, in silent and forc'd patience, groan under their grievances, as hopeless of help; others are compelled with great trouble, danger, and damage to their poor persons and estates, to seek remedy by ordinary justice, which, when they have obtained, they must nevertheless, through proud contempt and lack of execution, either thus molest your Majesty as the only strength and stay of their hopes under God, or else be utterly disappointed and lose all. The bearer can and will inform and qualify the particulars: and I, who am able at this time to do them no other good, nor comfort, and has so long and earnestly been solicited by them, do now prostrate myself at your Majesty's feet in their behalf,—not in humble ambition, nor in covered covetousness, intending and aiming by the correction of that Nobleman to seek the erection of my base estate and poor fortune, but once to acquit myself of that duty which, as I think, God, my conscience, my calling

your Majesty's favours towards me, and the fidelity of my bounden service does require at my hands, being as ready to retire myself to my former private condition, if it shall not displease your Majesty, as I have and shall be most willing and obedient to go forward against all dangers and difficulties in discharging my unworthy service here or there, where it shall please your Majesty to command. In end, I humbly beseech your Gracious Majesty, if there be any jot or tittle here to offend your Highness, pardon my imprudency, and respect with favourable countenance, this my petition, which I presumed to send up to your Majesty upon no other warrant than the certain knowledge and experience which I have of the piety, justice, wisdom, &c. wherewith God hath endowed and adorned your Majesty, which all and every one do join themselves with my humble supplication, and do call upon your Majesty's royal power for help and comfort to these wounded and griev'd members (though far distant) of your Highness' politick body. Sir, I do not use here the sower sweetness of flattering words, but from my heart does praise God, who hath graced and blessed your Majesty, and shall still pray that he may multiply more and more his blessings upon your sacred person, royal estate, and happy government, and crown your Majesty with the crown of glory.

Your Majesty's very loyal subject, and most humble Servant,
Edr. 17 Nov. 1608. JA. B. of ORCADS.

The Bishop of ORKNEY to the KING. *Part of a Letter.*

May 2, 1611.

THE Earl (of Orknay) is put, I know not how, nor by whose credit, in assur'd hope of your Majesty's favour, and of his full liberty, and returning to Orkney. But your M. will be pleased to consider his natural disposition, his former practices, his necessity, who cannot uphold his estate now without some wrongs done either to Sir John Arnot or me, or else to the poor oppressed people. I know your M. is not unmindful of the many and great complaints wherewith your M. hath been troubled before, and I assure myself that your M. will be more careful to see justice and peace established, even in those remotest parts of the kingdom, than to satisfy the Earl or any of his favourites desires for his liberty and re-possession, except it be upon such surety and caution as may make good for all dangers, troubles, and losses which may happily fall out.

No. V.

MINUTES of PRIVY COUNCIL anent the Earl of ORKNAY ; and his Answers to the Charges made against him by the Bishop (LAW) and Inhabitants of ORKNAY and ZETLAND.

6. March 1610.

ANENT our Sovereign Lord's letters raised at the instance of Sir Thomas Hamilton of Bynne, knyt. advocate to our S. Lord, for his Majesty's interest, making mention that where Patrick, Earl of Orknay, being committed to ward within the castle of Edinburgh for certain oppressions, injuries, and wrongs committed be him upon his Majesty's good subjects of Orknay and Zetland ; and his Majesty expecting that this trial and order of proceeding against the said Earl should have procured some peace, quietness, and surety to his Majesty's poor distressit people, and should have restrained the violent and insolent proceedings of the said Earl, his deputies, officers, and servants ; notwithstanding, as his Majesty is informed, the persons underwritten, they are to say, Mr James Steuart, brother-german to the said Earl, Edward Scolla, and David King, Sheriff-deputes of Orknay and Zetland, Henry Black, captain of the castle of Kirkwal, and Thomas Sinclair, servitor to the said Earl, assisted with the said Earl's sodgers, who are still kept and holden under the said Earl's pay and commandment, do continue in all kind of oppression, not only against those who exhibited their complaints against [here the record is quite defaced and worn out, insomuch that only the words of the charge, viz. extortions, insolvencies, riefs, and oppressions, can be discovered ; then follows:] The said pursuer compearand personally, and the said defenders being oft-times called, and not compearand, the Lords of Secret Council therefore ordained letters to be direct, charging officers of arms to pass and denounce the said Mr James Steuart, Edward Scolla, David King, Henry Black, and Thomas Sinclair, rebels, and put them to the horne, and to escheat, &c.

29. March, 1610.

The Lords of Secret Council, for certain causes and considerations moving them, tending to the furtherance and advancement of the King's Majesty's authority and service within the bounds of Orknay and Zetland, and for better obedience to be given to his Majesty's Commissioners and Justices who are to be directit to the said boundis, ordain letters to be directit to heralds, purseuants, and messengers of arms, charging them to pass, and in his Majesty's name and autho-

rity, command and charge Patrick Earl of Orknay, and all other havers, keepers, and detainers of the castles, towers, and fortalices of Kirkwal, the Place of Yardis, the House of Wallis, the Castle of Skelloway in Yetland, and Place of Birsay, to render and deliver the same to the heralds executors of the said letters, and to remove themselves and their servants forth thereof within sax days next after they be chargit thereto, under the pain of treason, with certification to them, and they faillie, they sall be repute, holdin, pursuit, and denouncit as traitors, and the process and doom of forfeiture sall be laid against them, conform to the the laws of this realm and actis of Parliament.

23. August 1610.

The whilk day Mr James Steuart, brother to the Earl of Orknay, was committed to ward in the castle of Edinburgh, and Edward Stewart, brother-natural to the said Earl, and Thomas Sinclair, his servant, were committed to ward in the tolbooth of Edinburgh, for certain oppressions committed be them, and verified and proven against them in presence of the Council. Also Thomas Sinclair, servant to the Earl of Orknay, confessed and declared that all that he did in thir matters betwixt him and the complainers of Orknay, whilks were verified and proven in presence of the Council, were done be him at the causing and command of the Earl of Orknay, whom he durst not disobey.

6. September 1610.

PROCLAMATION in favour of the Complainers of ORKNAY.

18. October 1610.

Proclamation for obeying the Commissioners of the Peace, directed to several shires, and, amongst the rest, to the Isles of Orknay and Shetland.

22. March 1611.

ACT discharging the Earl of ORKNAY, his Deputes, and Clerks.

Forsameikle as Patrick, Earl of Orknay, being now prisoner and at commandment within the castle of Edinburgh, for certain high crimes and offences committed be him, for the whilks there is plea of forfeiture depending agains him, and he being thairwithal denouncit rebel and put to the horn, whereby the offices of judicator, as well criminal as civil, whilks were proper in his person, doth now vaik in his Majesty's hands and his donators, swa that there is no lauchful administration of justice within the said boundis; nevertheles the said Earl, be his deputes, officers, and others in his name, still usurpis upon them the administration of the said offices, and, under the pretext and colour thereof commits mony insolencies, oppressions, and enormities upon His Majesty's poor people

within Orknay and Yetland, abusing his Majesty's name and authority as a pretext and colour for thame to cover all thair unlauchful doings, highly to His Majesty's offence, and to the hurt and prejudice of great numbers of His Majesty's good subjects. And His Majesty in his faderly cair and regaird towards the preservatioun of the saidis boundis under His Heynes's firm peace and obedience, having tane some course for establishing of religion and justice within the same boundis, wherethrow the inhabitants thair of may repose in surity of their lives and goods; and whereas the continuance of the said Earl his deputes, officers, and clerks in the administration of thair offices, will be an great hinder to His Majesty's princely resolutions foresaidis; thairfoir the King's Majesty and Lordis of Secret-Council, has dischargit, and be thir presents discharges all and sundry persons deputes to the said Earl in ony his offices of Justiciary, Sheriffship, or Bailliary within the boundis of Orknay and Yetland, thair clerks, officers, and servants, of all farder using or exercising of the saidis offices at ony time heirafter; and ordains letters of publication to be direct thairupon, and to command, charge, and inhibite all and sundry the saidis deputes, clerks, officers, and servants, that they in no way presume nor tak upon hand at ony time heirafter to use or exercise the saidis offices of deputrie or clerkship, dischairging thame thair of, and of thair offices in that part simpliciter, by these presents; and sicklike, to command, charge, and inhibite all and sundry His Majesty's lieges and subjects, that none of thame presume nor tauk upon hand to acknowledge or obey the said Erle, his deputes or clerks, in ony thing concerning the saidis offices, nor to compeir, pursue, or defend before thame in ony actions or causes, as thai will answer upon the contrairie at their heichest peril.

Act discharging Foreign Laws within ORKNAY and ZETLAND.

Forsameikle as the Kingis Majesty and his predecessors of famous memory, with the consent and authority of thair Estates of Parliament, has statute and ordainit, that all and sundry the subjects of this Kingdom sould live and be governit under the lawis and statutes of this realm allenarly, and be no law of foreign countries, as in the actis maid thairanent at length is conteinit; nochtwithstanding it is of verity that some persons bearing power of magistracy within the boundis of Orknay and Yetland has thir divers yeirs bygane, maist unlauchfully tane upon thame, for thair own private gain and commodity, to judge the inhabitants of the said countries be foreyne lawis, making choice sometimes of foreyne lawis, and sometimes of the proper lawis of this Kingdom, as thai find matter of gayne and commodity, in high contempt of our Sovereign Lord, and to the great hurt and prejudice of His Majesty's subjects; Thair-

foir the Lordis of secret-council has dischargit, and by the tenor hereof discharges the said foreign lawis, ordaniing the same to be no farther usit within the said countries of Orknay and Yetland at ony time heirafter, and that letters of publication be direct heirupon, commanding and inhibiting all and sundry persons bearing office of magistracy and judicatory within the same, that nane of thame presume nor take upon hand at ony time heirafter to judge or censure the inhabitants within the saidis boundis be foreyne lawis, nor to proceed in ony action or caus, criminal or ciuil, according to foreign laws, bot to use the proper laws of this Kingdom to His Majesty's subjects in all thair actions and causes, as thai and ilk ane of thame will answer upon the contrair at thair heichest perril.

Anent the Office of COMMISARIOT of ORKNAY and ZETLAND.

Forsameikle as the office of Commissariat within the boundis of Orknay and Yetland has been thir mony yeirs bygane very far obscurit, pairtly be the iniquity of the time, and be the usurpation whilks utheris judgis and magistratis within the saidis boundis took upon thame of a grite mony of the actions and causis proper and competent to the commissariat jurisdiction; and seeing the reverend fader in God, James, Bischop of Orknay hes now maid choise of Maister Henry Aitken, a famous man, of good credit, judgement, knowledge, and experience, to administer that office, and to gif justice to His Majesty's people in all and every thing concerning the same: Thairfoir, the Lords of Secret-Council ordains letters to be direct to command and charge all and sundry the inhabitants within the saidis boundis to reverence, acknowledge, and obey the Commissar foresaid, nominate and appointed be the said Bishop, in every thing concerning the said office: and sicklike, to command, charge, and inhibite all and sundry utheris judgis and magistrates within the saidis boundis, that nane of thame presume nor tak upon hand to recave befor thame the decisioun of ony action or caus proper and competent to the said Commissair, discharging thame thairof and of thair offices in that parte be thir presents, and under the pane to be callit, pursuit, and punisht for the same in thair personis and goodis, without favour.

PROCLAMATION to obey the Bishop of ORKNAY.

Forsameikle as the Kingis Majesty being moved with the grievous complaints fra tyme to tyme exhibite unto His Majesty be the poor people of Orknay and Zetland, and His Majesty being cairful to understand and know the true state and condition of his said poor people, and if thair complaints has been maid upon just cause and occasioun, or upon the distem-

perit humour and dispositioun of people, without good ground and warrand: Thairfoir his Majesty has directit and appointit the Reverend Fadder in God, James Bishop of Orknay to repair to the saidis boundis, and hes establishit him with full power, commissioun, and authority, as well to take trial and notice of the griefes and complaints of the saids poor people, and if upon just ground and warrand they haif complainit, and to make a trew relatioun thairfoir unto his Majesty, as to do and perform sundry utheris things concerning the affairs of the church, at length specified and containit in the commission given to him thairupon; Thairfoir the Lords of secret Counsell ordains letters to be direct, charging all and sundry his Majesty's lieges and subjects within the boundis of Orknay and Zetland, to reverence, acknowledge and obey the said Bishop, in all and every thing tending to the execution of his commission, as thay and ilk ane of thame will answer upon thair obedience at thair heichest peril; and sicklike, to warne all and sundry personis who has ony griefs or complaints to gif in agains ony person or personis in Orknay and Zetland, that thay gif in the same with the verifications thairfoir to the said Bishop, at the days and places to be appointit be him to that effect, wherethro' he may examine and try the same, and make a perfect and trew relatioun and report thairfoir unto the King's Majesty.

6th June 1611.

PROCLAMATION anent ORKNAY.

Forsamekle as the Kingis Majestie remembering that the governament of the countreyis of Orknay and Yetland hes bene thir mony yeiries bigane veri far neglectit and oversene, pairtly be the iniquity of the bi-past time, and partly be reason of the contestation which has been betwixt the inhabitants of the saidis countries and those whom his Majesty authorised with his royal power and commission within the same boundis, who being distractit in hairt, consent, and opinions and private grudges, inimiti, and hatrent entertainit amangs thame, thair hes followit thairupon mony great enormities and insolencies within the saidis boundis, to the great trouble and annoyance of many poor distressit people; and his Majesty in his faderly cair and regard towards the preservation of the said countries of Orkney and Yetland under his Majesty's firm peace, wherethrow the inhabitants thairfoir may repoise in suirty of thair lives and goodis, hes, be his commission undir his Grite Seal, maid, constitute, and ordainit James Bishop of Orknay and Sir John Arnot of Birswick, Knight, or ony whom he will depute and send in his name, his Majesty's Sheriffs and Commissioners within the boundis of Orknay and Yetland, and has authorised them with full power, commission, au-

thority, and direction to tak trial and notice of all oppressions, riots, and insolencies committed within the saidis boundis, to call the offenders before thame, and, according to the verification of their offences, to commit thame prisoners, or put them under good suirty for thair appearance before his Majesty and his Council, at such days and under such sums as they sall appoint, and for keeping of his Majesty's peace heirafter, and to make, prescribe, and set down acts, statutes, and ordinances for restraining of the bypast enormities and insolencies within the saidis boundis, and for retaining and keeping of the inhabitants thair of under his Majesty's obedience, and in that civil society amangst thameselves which becometh peacible and good subjects, and to exact the oath of allegiance and supremacy of the hail inhabitants within the said boundis, both laity and clergy, and to establish and tak the oaths of the justices and commissioners for his Majesty's peace within the saidis boundis, and to command all jails, prisons, and wardis to be deliverit to such as thay sall trust with the keeping thair of, and to convocate and assemble the hail inhabitants within the saidis boundis, to concur and assist thame in every thing which may forder his Majesty's authority and service within the saidis boundis : And whereas there is some poor people within the saidis boundis who has been violently, by all form and order of law, dispossessed and ejectit forth of thair kindly rowmes and possessions, and spoiled of their goods and geir. and hes not moyen to persew the samen be the ordinar course of justice befor the Lords of Session ; thairfor power and commissioun is given to the said sheriffs and commissioners to call the parties befor thame, and tak tryal according to the course of justice of the saidis violent ejections and spoliations, and accordingly as thay sall find the same verifiet and provin, and the inability of the parties greivit to persew the same befor the Council and Sessioun, that then the saidis commissioners repossess the poor people to their rowmis and possessions, and cause redress be maid unto thame of thair goods and geir ; and, for this effect, to fence and hald sheriff and justice-courtis in manner specifiet in the said commissioun, as the samen, containing divers others heids, clauses, articles, and conditions, at length beirs : Quhair of necessar it is, that publicatioun be maid to all and sundry his Majesty's lieges and subjectis, quhairthro nane pretend ignorance of the same ; for whilk purpois the Lordis of Secret Council ordainis letteris to be direct. charging officeris of armis to pass to the market-croice of Kirkwall and utheris plaices neidful, and thair, be open proclamatioun, mak publicatioun and intimatioun of the said commissioun to all and sundry his Majesty's lieges and subjectis to reverence, acknowledge, and obey, concur, fortify, and assist the said Sheriffs and Commissioners in every thing touching the execution

of this commissioun, and to do nor attempt na thing to thair prejudice, and to rise, conveen and meet with thame at such times, days, and plaices as thay sall be advertisit and warnit to that effect, under all heiest pane, charge, cryme, and offence that thay may commit and inrein agains his Majesty in that behalf.

Ult. Augusti 1611.

BOND of Cautionry for Patrick Earl of Orknay, to this effect: That being enlarged from his present confinement within the castle of Edinburgh, he shall address himself to the brugh of Edinburgh, and remain and keep ward within the said brugh, and four miles about the samen, not transcending the said bounds, till freed and reliev'd by the King's Majesty, under the pain of 50,000 libs.

THE EARL of ORKNAY committed to Ward.

The Lords of Secret Council, according to ane warrant and direction in writ, sent unto them, and sign'd be the King's Majesty, having demanded of Patrick, Earl of Orknay, if he had given ane commission of justiciary and sheriffship, within the bounds of Orknay, to Robert Steuart his base son: The said Earl granted and confessed that he gave his said son ane commission, according to the forms and order which formerly he gave to others, and says, That at the same time he writ to his said son, desiring him to use that commission to the uplifting and ingathering of his duties only, and no otherwise: In respect of the whilk declaration made be the said Earl, and of the verification producit be James Bishop of Orknay, whereby the Lords understood perfectly that the said Earl had given ane commission of sheriffship and justiciary to his said son, and that he, be virtue thereof, had tane up dittay and holden courts against the tenor of his Majesty's acts and proclamations, whereby all the said Earls bailies, deputes, and officers were dischargit of administration of ony offices within the said bounds; the Lords of Secret Council ordains the said Earl to be committit to ward within the castle of Edinburgh, therein to remain upon his own expences, ay and while he be freed and relieved be the said Lords.

And in respect of his being a close prisoner, his cautioners, in the next act, are discharged of their cautionry above mentioned. Then follows:

Charge against ROBERT STEUART and others.

Forsameikle as, altho' Patrick Earl of Orknay has been this lang time prisoner, and at commandment, within the castle of Edinburgh, as he is yet, for his violent and masterful oppressions committed upon his Majesty's peaceable and good subjects within the bounds of Orknay and Shetland; and his Ma-

jesty hoping that the warding of the said Earl should have in some measure procur'd the peace and quietness of the said countries, and that his Majesty's good subjects might have reposit in surety of their lives and goods: Notwithstanding it is of truth, that Robert Stewart, base son to the said Earl, Thomas Affleck, Alexander Legate, John Guilde, William Kirkness, bankis, soldiers, and servants to the said Earl, all resindenters within the bounds of Orknay; Lawrence Sinclair of Ustines, James Vimtor, younger, Andro Hawick of Scatista, James Craufords, William Fermour, nottar, and Adam Sinclair of Brow, likewise servants to the said Earl within the bounds of Yetland, following the course of the said Earl his behaviour, actions, and proceedings within the said bounds, do commit all kinds of iniquity and wickedness within the same; disdains and contemns his Majesty's commissioners, justices, and officers within the said bounds; oppress and overthrow the poor inhabitants thereof, over whom they may be masters and commanders; disturbs the peace of the said countries; and, be their insolence and misbehaviour, does what in them lies to foster and entertain ane publick and avowed contempt of all law, good order, and justice, in misregard of our Sovereign Lord, his authority, and laws: Therefore, ordains letters to be direct, charging the said persons to compear personally; as also, charging the said Robert Stewart, who now, under his fader, has the commandment of the persons foresaid, dwelland within Orknay, to bring, present, and exhibite them before the said Lords, upon the day of , &c. conform to his promise made to that effect to James Bishop of Orknay; to underly such order as sall be tane with them for the peace of the country, under the pain of rebellion, &c. with certification, &c. [In book 11th, I find a sederunt, 3d December 1611, the next in order to that above, in these words: "The Lordis appoints Friday next, at afternoon, to meet in the council-house, to hear the complaints given in against the Earl of Orknay." The result of which seems to follow in the other book, thus:]

Act abrogating some Unlawful Acts within Orknay and Shetland.

Forsameikle as certain acts being presented and exhibited to the Lords of his Majesty's Privy-council, in name of his Highness's good subjects within the bounds of Orknay and Yetland, containing some general grievances and oppressions whilks they underly, under the pretext and colour of certain unlauchful acts and observations, whilks, without warrant or authority of law, custom, or practick of this kingdom, has been of some few years continuance within the bounds foresaid; as, namely, the confiscation of the landis and goods of all such persons

who, after they are sworn in the courtis whilks are yeirly holden through the parochies, shall happin to conceal ony thing whilk may import either a personal or pecunial punishment; the prohibition given to relieve ony shippis distressit be stormis or unseasonable wedder; the prohibition given to pursue ony action before ony judge outwith the bounds of Orknay and Yetland; the prohibition and discharge of passage at the ferries without a pasport, when as there is no necessar caus to seik the same; the exacting of far greater taxations of the people nor the country is burden'd with; the confiscation of goods and gear of such personis who happins to meddle with wrake or weith casten up be the sea; and the confiscation of the goods and gear of such personis who mark not their bestial and goods within the time prefixed; Whilks articles and complaints being deliver'd to Patrick Erle of Orknay to have been answer'd be him, and he being at great length heard thereupon, both be word and wryte; and the said Lords having, with good advice and deliberation, consider'd all that was proponit be him for his defence and justification of the premises; and being well and thoroughly advised therewith, the said Lords findis and declares that the particular actis above written, quhidder they be established be actis and ordinances, or receivit be custom and observacioun of the country, are most unlauchful in themselves, and has no warrant in law, custom, or practick of this kingdom; and therefore the said Lordis has abrogate, annullit, and dischargit, and be the tenor hereof abrogates, annullis, and dischargis all the saidis actis and observationis, ordaining the samen to be no farder usit nor put in practise and executioun within the boundis of Orknay and Yetland at ony time hereafter; and ordainis letters to be direct to make publication hereof, be open proclamatioun at the market-cross of Kirkwal and other places neidful, quharthro none pretend ignorance of the same; and to command, charge, and inhibite the said Patrick Erle of Orknay, his deputes and officers, all others his Majesty's liedges and subjects within the said bounds of Orknay and Yetland, that they on na ways presume or take upon hand, at ony time after the publication hereof, to use or exerce ony of the saidis unlauchful actis or doings, or to trouble his Majesty's subjects therewith, or to practise or put the same in ony ways to execution, under quhatsoever colour or pretext, discharging thame thairof, and of thair offices in that part, under the hiest pain, crime, and offence that they may commit, and inrin agains his Majesty in that behalf.

The King's Warrant for Transporting the Earl of Orkney to the Castle of Dunbarton.

JAMES R.—Right trusty, and right well belovit Cousin and Counsellor, and right, trusty, and well belovit Counsellors, we greit you well: Whereas we haif, since our coming into this our kingdom, continually been importuned with complaints and petitions of the inhabitants of Orkney and Yetland; and now, understanding that thay haif, with one common consent, exhibite their grievances to thair Bishop, to haif been be him either sent or presentit unto us; we haif, for certain weighty reasons moving us thairunto, thought good to remit the consideration of these grievances, and every particular head thair of, unto you, willing you, that having narrowly discussit and examin'd every specialty, ye advertise us at great length, both of the particulars and of your own opinion concerning the same; and because we are credibly informit, that the aboad of the Earl of Orkney in Edinburgh is very prejudicial to mony of our good subjects of Orkney and Yetland, it is our pleasure that ye cause him be transportit to our castle of Dunbartoun, there to remain, and be kept in sure firmance, till ye sall be furder advertisit of our pleasure concerning him: And these premises commending to your special care, we bid you farewel.—[By a sederunt of 27th Feb. next following, in Book 11th of the Records, it appears the Earl was transported accordingly: Then follows in the same book another Sederunt in these words: 27th March 1612.—Ane commission to Sir John Arnot to levy some men of weare for Orkney.]

Proclamation against Transporting Passengers into Orkney.

Forsameikle as the King's Majesty having resolved to establish and perfyte peace, quietness, and obedience within the boundis of Orkney and Yetland, and to suppress the insolencies, enormities and oppressions wherewith the poor inhabitants thereof were overburden'd, distressit, and grievit, sua that hereafter they may repose in suirty of their lives and goods: In this mean time, information and advertisement is given, that some persons, upon foolish imaginary conceits and apprehensions of their own, has tane purpose to levy and tak up some men under pay and commandment, and to send them over to Orkney, to frustrate and hinder, so far as in them lies, the course of his Majesty's resolution, and to vex, trouble, and oppress the inhabitants within the said boundis; wherein, although thir foolish people may utter thair madness and headlongs run to thair own ruin and perdition, since such a handful of miserable bodies are not worthy the wrath of a Prince armed with power, force, and authority, to inflict punishment upon thame according to thair deservings; yet his Majesty pitying the case of thir simple people, who ignorantly be inducit to embark

themselves in so dangerous and desperate a cause, has thought good rather to prevent and stay the transport of thame to Orknay, than otherwise to lat thame, and then to tak vengeance of thame according to thair merits; And thairfoir ordains letters to be direct, to command, charge, and inhibite the masters, owners, skippers, and marines of whatsomever shippis and vessels, be open proclamation at the market-cross of Edinburgh, pier and shore of Leith, and other places neidful, That none of thame presume nor tak upon hand to transport ony passengers to Orknay and Yetland, but such as are known to be lauchful trafficking merchants, or such others as sall haif licence from his Majesty's council for thair going there, under pain of confiscation of the shippis and vessels wherein the said passengers sall be transported, and punishment of the saidis masters, owners, skippers, and marines, at the arbitrement of his Majesty's council; certifying them that fails, or does in the contrary, that the saidis pains sall be execute upon thame without favour,

Charge for Rendring the Houses of Kirkwall and others.

Forsameikle as the King's Majesty, for the establishing and preserving of his Majesty's peace within the bounds of Orknay and Yetland, and for administration of justice to parties wronged, repressing the insolence of malefactors within the said boundis, and keeping of good order and rule within the same, has made choice of some persons of good worth, fame, credit, and reputtation, to be his Majesty's Justices and Commissioners within the said boundis; and whereas they cannot sufficiently execute and discharge thair commissiouns so long as the houses and strengths within the said boundis are in the keeping of Patrick Earl of Orknay and his servants, who will do what in thame lies to oppose thaimselfes to all such courses as sall be tane for the weal and quiet of the country: Therefore his Majesty, with advice of the Lords of his Secret Council, ordains letters to be direct to heraulds, charging thame to pass, command, and charge the said Patrick, Erle of Orknay, to render, and cause the castle, houses, and fortalices of Kirkwal, Skelloy, and the bishop's house callit the Yairdis, &c. to be renderit and deliverit to his Majesty's heraulds and officers who sall be directit to receive thame; and that within six hours after the keepers of the said houses sall be chargit to render the same, after the 15th day of July next next to cum, under the pain of treason; with certification to the said Erle, and he fail in delivering and causing of the said houses and fortalices to be deliverit when thay sall be chargit in manner foresaid, after the said 15th day of July next to cum, That he sall be repute, halden, pursuit, and denouncit as a traitor, and the process and doom

of forfeiture sall be led against him, conform to the laws of this realm, and actis of Parliament.

Commission to the Bishop of Orknay.

Forsameikle as the government of the countries of Orknay and Zetland has been thir mony years bygane very far interruptit, neglect, and overseen, partly by the iniquity of the bypast times, and partly be the rebellion of Patrick Erle of Orknay, whom his Majesty authorised with his royal power and commissin within the said bounds, who, abusing that credit and trust whilk his Majesty reposit in him, did, under colour of his Majesty's princely authority, commit mony great enormities and insolences upon his Majesty's poor people, inhabitants within the said bounds; whereupon mony complaints has been made, and sufficiently qualified, in presence of the Lords of his Majesty's Privy Council, for the whilk the said Erle is now prisoner within the castle of Dumbarton: And the King's Majesty, in his faderly care and regard toward the preservation of all the provinces of his Majesty's kingdom under his Highness's firm, peace and obedience, resolving to establish the countries of Orknay and Zetland in peace and quietness, wherethrow religion and justice (the pillars and sureness of all commonweals) may flourish within the same, and that his Majesty's poor subjects may repose in surety of their lives and goods; having consideration likewise, that the offices of judicatory, as well in civil as criminal causes, within the said bounds, presently vakes in his Majesty's hands be the rebellion of the said Patrick Earl of Orknay, who, and his deputes, officers, and clerks, are be divers actis and proclamations, formerly made publick, and intimate unto thame, dischargit of all using of the said offices, so that now there is no lawful administration of justice within the said bounds, but all men, according to their several humours and disposition, living in riot and othor insolences, when they may be masters and commanders: And his Majesty having good proof and experience of the singular judgment, wisdom, and knowledge of the Reverend Fader in God, James Bishop of Orknay, and of the integrity and sincerity of his disposition to equity and justice: Therefore his Majesty, with advice of the Lords of Secret-Council, has nominate, made, constitute, and ordainit the said James Bishop of Orknay, and his deputes, his Majesty's Sheriffs, Justiciars, and Commissioners within the said bounds of Orknay and Zetland; with full power and authority to repair to the said bounds, and take trial of, and punish all oppressions, enormities, and insolences committed there,—acts, statutes, and ordinances for restraining of the bypast enormities and insolences which has been so fre-

quent and common within the said bounds, and for retaining and keeping of the inhabitants of the same bounds under his Majesty's obedience, and in that civil society amongst themselves which becometh dutiful and peacible subjects,—to make, prescribe, set down, and see the same receive due execution in all points—to exact the oath of allegiance and supremacy of the inhabitants within the said bounds, both laity and clergy—to command all castles, jails, prisons, and wards to be made patent and delivered to them,—sheriff and justice-courts to hold and continue—brieves of our Sovereign Lord's Chancery, which shall happen to be direct to the sheriff of Orknay and his deputies, to open, and cause the same be proclaimed. And this commission, ay and while the same be specially discharged, to endure.

Charge against certain People of Orknay.

Forsameikle as the King's Majesty, upon mony respects and considerations, especially for establishing of peace, justice, and quietness within the bounds of Orknay and Zetland, and for restraining and suppressing of enormities and insolencies wherewith his Majesty's good subjects within the said bounds were distressit and grievit, having thought meet and expedient that Patrick Earl of Orknay should be drawn forth of the said bounds, and made prisoner where he now remains in the castle of Dumbarton, that thereby his Majesty's said subjects might have lived in quietness under his Majesty's protection and peace: Notwithstanding it is of truth, that the persons underwritten, they are to say, &c. (Their names are not mentioned) all men, servants, followers, and dependars upon the said Earl, being no way moved with the punishment inflicted upon the said Earl their master, for his misbehaviour within the said bounds, and for his connivance and oversight given unto them in all their follies and wickedness, they, in plain contempt of his Majesty, and misregard of law and justice, do not only continue in their former insolencies and oppressions, whilks under the colour and name of the said Earl they committed within the said bounds, bot with that they commit far greater wrongs and enormities nor at any time bygone was heard of in these bounds, so that there is no appearance or likelihood that the said countries can ony ways be reduced to civility, peace, quitness, and obedience, so lang as the persons foresaid has ony reset, residence, or protection there; and therefore the said Lords ordains letters to be direct, to command and charge the persons particularly above-written to withdraw and retire themselves forth of the bounds of Orknay and Zetland, within ten days next after they

be charged thereto, wind and weather serving to that effect, and that they in noways presume or take upon hand to return again to the said bounds, without licence had and obtain'd from the said Lords to that effect, under the pain of rebellion, &c. and gif they fail, to denounce, &c.

PUBLICATION of the ANNEXATION of the EARLDOM of ORKNAY to the Crown—(29th Oct. 1612.)

Forsameikle as the King's Majesty, with advice of his Estates conven'd in the Parliament halden at Edinburgh upon the 23d of October instant, has united, annexed, and incorporated to his Majesty's crown of this kingdom of Scotland, therewith to remain perpetually and inseparably in all time coming, all and sundry the lands and isles of the earldom of Orknay and Zetland; and whereas his Majesty, by virtue of this annexation, and of the rights, titles, and securities whereupon the same proceeded, has now the full and undoubted right to the lands, isles, offices, and others particularly above specified and contain'd in the said annexation; and, in regard thereof, and upon good proof and experience of the dutiful carriage and worthy behaviour of the Reverend Fader in God, James Bishop of Orknay, has not only given to him an large and ample commission, to tromit with and uplift his Majesty's hail maills, duties, farms, casualties, wrack and waith of the said earldom of Orknay and Zetland, bot likewise to administrate, use, and exerce the offices of sheriffship, justiciary, and foudry of the said earldom, and to do and perform sundry other offices and duties for entertaining of his Majesty's peace, good rule, and quietness within the said bounds, wherein he has very carefully, dutifully, and faithfully behaved himself, to his Majesty's exceeding good liking and contentment; nevertheless, his Majesty and the Lords of Secret Council are informit, that some idle and busy bodies within the said bounds, lovers of trouble and unquietness, and impatient to hear, know, or understand of ony reformation of the abuses whilks formerly was so frequent and common in the said bounds, and desirous still to fish in drumly waters, has bussied, and bussies thameselves by surmising and feeding of the ears of the simple multitude with sinister hopes and foolish apprehensions of alterations and changes of the present estate of the said bounds to the former condition of misrule, trouble, and oppression, to alienate and withdraw their hearts from his Majesty's obedience, and from acknowledging of their Bishop his Majesty's commissioner foresaid; and so by halding of the simple people in suspence and fear of alteration and change, they have done, and does what in them

lies to frustrate and hinder the execution of all his Majesty's directions and commissions concredite to the saide Bishop, and they have been a very great let and impediment to the timeous and thankful payment of his Majesty's duties and rents: Likeas some other persons within the said bounds, under pretext and colour of a deputry in the office of admiralty, doth pretend, claim, and challenge right to the wrak and waith within the said bounds, and has halden courts, and troublit some of the inhabitants of the same bounds for that cause, although the wrak and waith within the said bounds was in all time by-gane peacibly possessed be the late Earl of Orknay as a proper part of his casualty and rent, without any challenge made thereto be the admiral or his deputes: And his Majesty being now become in the said Earl his right and place of the said earldom, all that was formerly possessed be him is now due to his Majesty; and it is a very great presumption to any person whatsoever to disturb his Majesty's possession and right in a matter wherein formerly they have been silent, whereby as they misregard his Majesty, in presuming foolishly and unlawfully to usurp the possession of a part of his Majesty's annexed property, so they give evil example to others to do the like: Therefore his Majesty, with advice of the Lords of Secret Council, ordains letters to be direct, charging officers at arms to pass to the market-cross of Kirkwal, and other places needful, within Orknay and Zetland, and there be open proclamation to give signification to all his Majesty's lieges and subjects, that the lands and earldom of Orknay and Zetland are annexit to the Crown, to remain perpetually and inseparably therewith in time coming; and, therefore, to command and charge all and sundry his Majesty's lieges and subjects within the said bounds, to behave them as dutiful subjects to his Majesty, and to live in peace and quietness, under the fear, reverence, and obedience to his Majesty's laws; and for this effect, that they reverence, acknowledge, and obey the said James Bishop of Orkney, his Majesty's commissioner, justice, chamberlain, and factor, in all and every thing concerning his concredit and charge, forbearing to give any ear or credit to such sinister and idle tales and reports as has been made to them; and that they make timeous and thankful payment to the said Bishop, and such as he shall appoint, of his Majesty's hail maills, rents, casualties, and duties, and of the wrak and waith, as the same shall occur and fall out; and that they on no ways presume, upon whatsoever colour or pretence, to make payment of any part of his Majesty's rents, casualties, wrak and waith, to any person or persons, bot to the said Bishop, and such as shall be appointed be him: And to command and inhibit all and sundry persons claiming right and title to the office of admiralty, or deputy thereof, that they on no ways pre-

sume or take upon hand to meddle or intromit with the said wrak and waith, or to trouble ony of the inhabitants for that cause ; certifying all and sundry persons who shall violate and contravene ony head, clause, or article of these presents, that they shall be callit, convenit, and pursuit therefore, and shall be exemplarily punishit in their persons and goods, to the terror of others to commit the like.

22 June 1613.

Four pounds daily allowed the Earl of Orknay, prisoner in the castle.

1. February 1614.

The Earl of Orknay being personaliter present, took the last of this month, betwixt and which time he would be advisit with his friends anent the proposition maid to him, touching the renunciation of his right to the *legal Reversion of the Earldom of Orknay, and of all other right and title that he may pretend to that Earldom, upon HONOURABLE AND GOOD CONDITIONS to be maid to him for the same.**

1. March 1614.

The whilk day the Earl of Orknay compearand before the Council, and being demanded if he had advised with his friends, and was now prepared to give his answer to that proposition which was made to him touching his renunciation of his right to the *legal Reversion*, &c. (as above)—the said Earl declarit that he was not now preparit to give his answer in that matter, because his friends to whom he had written to haif advisit him in this business were not come here, be reason of the unseasonable weddar ; and therefore he cravit the 15th day of May next to be resolvit, and to give his answer. The Council having heard his delaying answer, they refusit to give him so long a day ; and because the approaching vacance is now at hand, and that *they man acquaint his Majesty afore they dissolve*, therefore they have appointed and appoints unto the said Earl the last council-day of this session, which will be the 10th of this instant, to give an direct answer to the said proposition.

10. March 1614.

The whilk day, Patrick Earl of Orkney, be his petition given in to the Council, excusit himself as not being prepared this day to give his snswer to that proposition made to him anent the legal

* On looking at the dates of the acts of Parliament and Privy Council by which the Earldom of Orkney was arbitrarily wrested from Patrick Stewart, it will be observed that they were passed *before* this extraordinary proposition was made to him, and while he was in ward and on trial for all his sins during 22 years !

reversion of Orkney, in respect that the Earl of Cassels and others his friends, whose advise he was to follow in that matter, were to be in this town betwixt and Tuesday next, the 15th of this instant; and therefore he craved that day to give his answer, which was grantit.

The same day the Bishop of Orknay offerit to demit and surrender his bishoprick of Orknay into the Council's hands, whilk demission the Council refusit to accept, and intreat the bishop to haif patience, while the King's Majesty's good liesure and opportunity might serve to see and consider the writs sent up to his Majesty anent that benefice, and to return his answer thereanent to the Council.

15. March 1614.

The whilk day the Earl of Orkney compearand before the Council, and demanded if he was now resolved to give his answer to that matter whilk was proponit to him anent the legal reversion of Orknay, he declarit that he had advisit with some of his friends thereanent, and for answer he humbly cravit of the Lords that he might have liberty to go to Court and to kiss his Majesty's hands, and he doubt not bot he suld gif unto his Majesty contentment and satisfaction: The Lords having heard his answer, *send him back again to his ward, to remain there while his Majesty's will and pleasure be known towards him.*

No. VI.

TRIALS of EARL of ORKNAY, 1610—11.

CURIA JUSTICIARIÆ, S. D. N. Regis Tenta in pretorio burgi de Edinburg, secundo die mensis Augusti Anno Domini, millesimo sexcentessimodecimo, Per honorabilem et discretum virum dominum WILLIELMUM HEART de Prestoun, militem Justiciarium, S. D. N. Regis, sectis vocatis et Curia legitime affirmata.—Aug. 2, 1610.

Intran.—PATRICK Erle of ORKNEY, &c.

Dilaitit of certane tressonable crymes, at lenth specifeit and sett doun in our Souerane Lordis letters vnderwritten.

Persewar.—Sir Thomas Hammiltoun of Bynnie, Knycht Advocat to our Souerane Lord for his Hienes intreis.

My Lord Aduocat producet our Souerane Lordis letters deulie execute and indorsate vpon the said Patrik Erle of Orknay quhairof the tennor followis :

Followis the tennour of the letters : James, be the Grace of God, King of Grit Britane, France, and Ireland, Defender of the Faith, to our louittes, Johnne Blinsell, Ilay herauld, massingeris, our sherrefis in that pairt conjunctlie and seuerallie, speciallie constitute, greting: Forsamekill as it is humlie meanit and complenit to us be our trustie and weilbelouit counsaler Sir Thomas Hammiltoun of Bynnie, knyght, our advocat for our intreis, vpon Patrik Erle of Orknay, Lord Zeitland, &c. That quhair it is expresslie statute, ordanit, and obseruet be our lawis and actis of Parliament of this our realme, and be the common law and consuetude inuolablie obserued in all Christiane and ciuile nationes, That quhaeuir dois treasone aganis the Kingis persone or His Majestie, or usurpes vpon thame his souerane authoritie in poyntis of royall soueranitie, sal be puneished as tratouris: And trew it is, and of veritie, that the said Patrik Erle of Orknay, altogidder unmyndfull of that dewtie quhilk be the bandis of nature, subiectioun, and allegiance he aucht to ws, and of the infinite fauouris and benefeitis ressauit be him from us, hes, be him selff and vtheris in his name, of his causeing command ressett assistance and ratihibition, in contempt of ws and or auctoritie royall, committed and perpetrat the most and treasoneable crymes, following at the tymes and in maner vnderwritin, and was and is airt and pairt of the samyn. In the first, the said Patrik Erle of Orknay be him selff, his deputis, magistrattis, and judges appointed and depute be him in the offices of shirreffchip, stewartrie, and bailzerie of our sherrefdome and bischoprik of Orknay and lordschip of Zeitland respective, of his causing, command, assistance and ratihibition, monethlie and ilk moneth in the zeiris of God Im Vc fourscoir nyne, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, and ane thousoand sax hundreth and ten zeiris, at the leist in ane or vther of the saidis monethis and zeires, persewed, accused, proceidit, and pronounced dyverse decreittis and sentences aganis vngle Sir Patrick Bellenden of Evie, knyght, — Balfoure of Montquhanie, Robert Menteith of Williamie Bannatyne of Gairsay, Sinclair, younger of Etha, Bruce of Cultmalindie, Henrie Wardlaw his servand, Adame Mudie

with mony vtheris our faithfull and obedient subjectis of the cuntreyis of Orknay and Zeitland, according to lawis treasonable maid and practized be him selff direct contrair and repugnant to the lawis of our realme and actis of our Parliament maid be ws and our maist noble progenitoures Kingis of this our realme, to quhome only the power to mak lawis belongis

as ane peculiar poynt of our and thair regall soueranie, and thairby decernit thame to haif committed capitall and tressonable crymes, and of his awin presumption and vsurpation of our authoritie royall without ony warrand of ws, hes tressonabillie dispenset with the poyntis of death; and ordanit the saidis persones quha war convict and condemned in maner foirsaid, only to be banished furth of the saidis boundis of Orknay and Zeitland, and hes tressonabillie adiudget thair landis, guidis, and geir to be forfeited and escheit to himselff: As also the said Patrik Erle of Orknay be himselff, and his foirsaidis, in the monethis and zeirs of God foirsaidis, at the leist in ane or vther of the saidis monethis and zeiris, tressonabillie persuadit, induced, counsallit, and commandit Williame Sinclair of Etha, Henrie Sinclair of Touquhy, Mr Robert Hendersoun, Williame Irwing of Saba, and many vther gentilmen of the saidis countries of Orknay and Zeitland, to subscriue and delyver to him ane band callit band mutus, and thairby obleise thame selffis and thair aires that thai sould serue and manteine him aganis all and quhatsumeur persones, without ony reseruatioun of ws, and that they sould nevir heir nor knaw his hurt or skaith bot sould reveill it within twentie-foure houres without ony exception of impossibilitie or distance of place, contrarietie of wind, wedder, or vther impediment, vnder the pane of tynsell of lyfe, landis, and guidis; contening also this clause, "that gif it hapned that the contravening of this band be ony of the saidis subscriueris sould nocht cum to the said Erle's knowledge quhile efter the committeris decease, it sould be liesum to him to try the samyn efter thair daithe aganis thair airis, and pwneise thair saidis airis as he mycht haif done the principall offendour; and that the said probation of thair contravening of the said band sould be sufficient be tua witnessis," byndand lykwayis the saidis gentilmen and vthers of the cuntrie to be judged be the said Erle, and nevir to seik to King, counsell, nor session; quhilk band the said Erle hes debaited to be lauchfull, and hes confest the ressaung and haveing thair of, althocht it be maist vnnaturall, iniust, tyrannical, impossible, and tressonable, bindand men to impossibilities, and inioyneing to them, in caice of contravention, the paynes of treason, for naiked conceiling and nocht reveilling his skaithe generalie in any matter; it being of veritie, that no man hes power to prescryve or exact such paynes, bot only Souerane Prynces, and that in matters treasonable allanerlie; quhairby the said Erle has manifestlie and treassonablie vsurped vpone him our royall authoritie and princelie power in poyntis of our absolute soueranie: Lykeas the said Patrik Erle of Orknay hes tressonablie tane vpon him, in the saidis zeiris and monethis, at the leist in ane or vther of thame, to call and persew befor him and his pretendit deputtis and judges, in his pretendit jurisdic-

tiones of Orknay and Zeitland, Adame Mudie, and many vtheris our frie and obedient subiectis ; and efter his pretendit maner, haifing accused and convicted thame of dyverse crymes, hes nocht only pronounced aganis thame the sentence of banishment and forfaitour to him selff of thair landis and guidis, bot thaireftir componed, transacted, and agreed with thame ; and treasonable vsurped our royall authoritie and souerane power, be remitting to thame the saidis capitall crymes, quhilk no man hes power to do within this our realme, bot the king and souerane of the same. As likewise, the said Erle bereifing our faithfull subiectis of the benefeit of our pease and generall protection, and the fredome of thair travelling and traffique be sea and land, hes in the zeiris and monethis foirsaidis, at the leist in ane or vther of thame, discharged the passages and ferries of Orknay and Zeitland, that nane sould haif entreis or outgoing furth thair of without his pasport and licence, and did incarcerat in stokis and irnes the servands of James Stewart of Gramesey, for transporting of Robert Menteith, his guidbrother, without his licence ; and caused incarcerat the servandis of Francis Mudie for transporting thair said master ; the men of Sowna, for transporting Williame Bannatyne ; and the men of Flottay, for transporting of thair maister, held and detenit thame captiues and prissoneris in irnes, stokis, clois prissone, and furance, dyverse dayis and oulkis, usurping thairby most tressonable our authoritie royall, and bereifing our lauchfull subiectis of the vse and benefite of thair natiue libertie dew to thame in thair frie passage and traffique vnder our peace and protection throw all the partis of this our kingdome be sea or land. And, nocht content thairwith, the said Erle, leifing na soirt of extraordiner oppressioun and treasonable violence vnpractized aganis the saidis inhabitants of Orknay and Zeitland at the tymes perticulerlie above reherset, at the leist in dyverse of the monethis and zeiris foirsaidis hes compellit the maist pairt of the gentilmenis tennentis of the saidis contreyis of Orknay and Zeitland to work to him all manner of work and labour be sea and land, in rolling and sailling his schippis and boitis, working in the stane querrell, wyning and beiring furth thair of stanes, and red laiding his boittis and schelopes with stane and lyme, and loiseing the same, biging his park dykis, and all oyer soirtis of serveill and paynefull laubour, without ather meit, drink, or hyre. And, to conclud the vtter rwyne of the possessouris of the saidis landis and yles, hes, in the saidis zeiris and monethis, at the leist in dyverse of the same, imposed, exacted, and tressonabillie vplifted frome thame dyverse grit and exorbitant taxationes and impositiones, quhilkis na man may lauchfullie do within this our realme bot we of our souerane power allanerlie, vsurpeand thairby maist tressonabillie vpone him our authoritie

royall. Finallie, the said Erle, in the saidis monethis and yeiris, at the leist in ane or vther of thame, hes tressonabillie dischargit the saidis inhabitants of Orknay or Zeitland to by or sell meill, malt, meit, drink, fische, flesh, butter, nolt, scheip, or ony vther commoditeis without his licence, vnder grit penalties: Lykas he has oft and dyuerse tymes, with all rigour, exacted the saidis penalteis aganis sundrie of the saidis inhabitants, for thair lauchfull bying and selling of thair commoditeis and necessaris without his licence. Quhilkis treasoneable crymes aboue writtin, and ilk ane of thame, war done, committed, and perpetrat be the said Patrik Erle of Orknay be himself and his complices, and vtheris in his name, of his causing, command, assistance and ratihabitoun. And thairby the said Patrick Earle of Orknay hes committed treasone aganis us, and hes tressoneabillie vsurped vpone him the poyntis of oure soueranie and inseperable pairtis of our royall power and authoritie, and he is airt and pairt thairof, and aucht and sould be pwneischid thairfoir be the paynes of treasone with all rigour, in example of vtheris to attempt the lyke, gif sua be. Oure will is heirfoir, and we charge you straitlie, and commandis that incontinent thir our letters sene, ze pas, and in our name and authoritie command and charge the said Patrick Erle of Orknay, committer of the treasoneable crymes above-written, in maner foirsaid, vpone fourtie dayis wairning, to find sufficient and responsall caution and souertie actit in our buikis of Adjournall, that he sall compeir befoir our Justice or his deputis, and vnderly our lawis for the samyn, in our tolbut of Edinburgh, the secund day of August nixt to cum, in the hour of caus, vnder the paynes contenit in our actis of Parliament; and that ze charge him personallie gif he can be apprehendit, and, failzeing thairof, at our castell of Edinburgh, quhairin he hes his remaining for the present, and be oppin proclamation at the mercat croce of our burgh of Edinburgh, to find the said souertie actit in maner foirsaid, within sax dayis nixt eftir he be chargit be zow thairto, vnder the pane of rebelloun and putting of him to our horne; the whilkis sax dayis being bypast, and the said souertie nocht being fundin, that ze incontinent thereftir denunce the said Patrick Erle of Orknay our rebell, put him to our horne, and escheit and inbring all his moveabill guidis to our vse for his contemp-tioun, and cause register thir our letters, with zour executiones thairof, within fiftene dayis thereftir, conform to our act of Parliament maid thairanent; and gif he find the said souertie, that ze summond ane assyse heirto, nocht exceiding ye number of fourtie-five persones, quhais names ze sall ressaue in roll subscriuit be the complainer, ilk persone vnder the pane of ane hundreth merkis: According to justice, as ze will ansuere to us thairvpone; the quhilk to do we commit to zow conjunct-

lie and seuerallie our full power, be thir our letters, delyuer-
ing thame be zow deulie execute and indorsate agane to the
beirar. Gevin vnder our Signet at Edinburgh, the fourt day
of June, and of our regime the aught and fourtie thre yeiris,
1610. Ex deliberatione Consilii Dominorum. Sic subscribun-
tur Literae P. Bannatyne.

Thaireftir my Lord Aduocat producet ane warrand of the
Lordis of his Maiesteis Secreit Counsall, direct to my Lord
Justice, for continuation of the said dyet to the nynt day of
August instant, of the quhilk warrand the tennour followis:
Justice-Clerk and zor. deputis, Forsamekill as the secund day
of August nixt to cum being appointit to Patrick Erle of Ork-
nay for his compeirance befoir zow, to vnderly the lawis for
certane crymes specifeit and contenit in the letteris raised
thairanent; nevertheles, for some speciall considerationes of
his Maiesteis seruice, it is oure will, and we command zou to
continew the said dyet to the nynt day of the said moneth of
August next to cum, conforme to the ordour obseruit in the
lyk casses, whearanent thir presents sall be your warrand. At
Edinburgh the xxvij day of July 1610. *Sic subr.* Al. Can-
cells. Dumbar.

The Justice for obedience of the said ordinance continowit
the said dyet to the said nynt day of August instant.

My Lord of Orknay takis instrumentis of his compeirance,
and declairis, quhatevir alledged cryme is sett down in his dit-
tay, *he had sufficient power and authortie grantit to him to do the
same, nocht granting thame to be crymes: As sall be justifeit be
him in the awin time and place.*

**CURIA JUSTICIARIE S. D. N. Regis Tenta in Pretorio de
Edinburgh, nono die mensis Augusti Anno diij millesimo
sexcentesimo decimo, &c.**

Intran.—Patrick, Erle of Orknay.

Dilaittit of the seuerall crymes of treasone mentionet in our
Souerane Lordis letters producet be our Sourane Lordis advocat
vpone the secund day of August instant against him.

Persewar.—Sir Thomas Hammiltoun of Bynnie, knight, ad-
vocate, to our Soverane Lord for his Hienes intreis.

My Lord Advocat producet ane warrand of the Lordis of his
Maiesteis Secret Counsell anent the continuatioun of this dyet
appointit for my Lord of Orknayis tryell to the *saxtene* day of
August instant, quhairupoun my Lord Aduocat askit instru-
mentis, off the qlk warand the tennor followis [in common form.]

The Justice, efter reiding of the said warrand for obedience of the ordinance therein conteinit continewit, the said dyet to the said saxtene day of August instant, quhairvpone my Lord Aduocat askit instrumentis. The Erle of Orknay askit instrumentis of his entrie, and *offerit him selff to the tryell of the law for the allegit crymes contenit in the letters nochtwithstanding of the said continuatioun.*

CURIA JUSTICIARIE S. D. N. Regis Tenta in Pretorio de Edinburgh decimo sexto die mensis Augusti 1610.

The Justice ordanit this dayis dyet appointit for tryell of my Lord of Orknay, &c. to desist, in respect that my Lord Orknay was nocht presentit vpone pannell.

CURIA JUSTICIARIE, &c. 22d November 1610.

Intran.—Patrick Earl of Orknay.

Dilaitit of certane tressonable crymes at lenthe specifeit and set down in the summondis producet aganis him be our Souerane Lordis Advocat.

Persewar.—Sir Thomas Hamiltoun of Bynnie, knycht aduocat to our Souerane Lord for his Hienes entreis.

My Lord Aduocat producet the summondis raiset against the Erle of Orknay to this day, with the executionis thair of, quhair of the tennor followis, [as narrated in the first diet of Court.]

Thaireftir my Lord Advocat producet to the Justice ane warrand of Secret Counsell direct to him anent the continuation of this dyet to the *nyntene day of December next to cum*, quhilk the Justice ordanit to be red, of the quhilk warrand the tennour follows [in common form.]

At command of the quhilk warrand the Justic continewit the said dyet to the said nyntene day of December nixt to cum; quhairvpoun my Lord Aduocat askit instrumentis.

My Lord of Orknay takis instrumentis of his compeirance, and *offeris him selff to the tryell of the law for the crymes contenit in the letters, and disassentis to all forder continuatioun.*

CURIA JUSTICIARIE, &c. 19th December 1610.

Intran.—Patrik Erle of Orknay.

Dilaittit of certane perticular poyntis of treasoun contenit in the summondis producet be our Souerane Lordis Advocat

against him, vpon the twentieth day of November last by-
past, &c.

My Lord Advocat producet the Lordis of Secreit Counsallis
warrant for continuatioun of my Lord of Orknay's tryall to the
aucht day of Merche nixt to cum, off the quhilk warrant the ten-
nor followis [in common form.]

After reiding of the quhilk warrant, the Justice for obedience
thair of continewit the diet abone written to the said aucht day
of Merche nixt to come, quherupoun my Lord Advocat askit
instrumentis. My Lord Orknay askit instrumentis of his com-
peirance, *and that he offerit himself reddie to abyde ane tryall,*
dissassenting fra all maner of continuatioun.

CURIA JUSTICIARIE, S. D. N. Regis Tenta in Pretorio de Edin-
burgh 8th March 1611, &c.

Intran.---Patrik, Erle of Orknay, &c.

Dilaitit of certane points of treasone contenit in his dittay
producet aganis him in process.

My Lord Advocat producet ane warrant snbscryuit be the
Lordis of Secreit Counsall anent the continuatioun of my Lord
of Orknayis triell to the *fyftene day of May nixt to cum*; and
vpon the production therof, askit actis and instrumentis, of
the quhilk warrant the tennor followis, &c.

Eftir reiding of the quhilk warrant the Justice for obedience
of the command thair of continewit the said dyet to the said fyf-
tene day of May nixt to cum; quhairvpon my Lord Advocat
askit instrumentis.

My Lord of Orknay takis instrumentis of his entrie; and
nochtwithstanding of the quhilk warrant of the Counsell,
offeris himselff to the tryell of the law for ony crymes that can be
laid to his charge, dissassenting simpliciter to all forder continua-
tioun. The Justice ordanit the said Erle of Orknay to be re-
turnet bak agane to his waird.

Extractum de Libro actorum Adiornalis, S. D. N. Regis per
me Dominum Joannem Cokburne de Ormestoun, militem, Cle-
ricum Justiciarie eiusdem generalem. Testan. meis signo et
subscriptione manualibus.

JO. COKBURNE.

From these proceedings, it appears, that, betwixt the 2d of
August 1610 and the 8th of March 1611, the Earl of Orkney
was dragged from prison to the bar of the Court of Justiciary,

upon the same charge and criminal letters, not less than *five* different times; that without any specification as to time and place, he is accused of high treasons committed during a period of *twenty-two years*; and that at every diet of the Court he demanded trial, protested against delay, and maintained he had committed no crime. A sixth diet of trial was appointed; but as the record closes without notice of any proceedings held at any such sederunt, it is probable none took place; and that, with perhaps some short relaxation, he remained in confinement, upon false or exaggerated charges, from the 6th of July 1609, when he was first committed to Edinburgh castle by order of the Privy Council, till the 1st day of February 1615, when he was again placed at the bar of the Justiciary Court, upon a *new* indictment, and for a different offence. Before proceeding to the record of this last act of persecution, his *answers* to the former indictment, (or rather it is probable in the Privy Council) on which he was never brought to regular trial, are worthy of notice.

ANSWERS for the Part of PATRICK, (Earl of) ORKNAY to the pretendit Complaints given in against him be the Inhabitants of ORKNAY and ZETLAND.

In the first, as to the first article and complaint, be arand thar my Lord takis ewerie zeir ane fat ox and twelf sheipe of ewerie paroche, without ony rycht :

It is answerit thereto, that the samyne has bene ane auld accustomed deutie noit only payit to his L. selff in his awn tyme, bot also to his umql. father; swa that his L. has no vayis exactit the said deutie of them bot that whilk they were accustomed to pay befor his entrie, and can be comptit neither wrong nor violence in his L. parte to continew in uplifting of the auld accustomed deutie whilk the complaineris was in use to pay before his L. entry.

As to the secound article, be arand in effect that throuch all the parishones the people ar compellit to swear that they sall conceal nothing that may make an unlaw to the Erle; and in cais they do conceal the samyne being notifyt to the Erle and his deputs, then their landis, goodis, and geir ar confiscat, and they ar compellit to agrie thairfoir :

It is answerit, that that article is so general and innept that no probatioun can be led or deducit yrupone, niver condescending in special that my Lord compellis them to sweir, nor yet that any thing followit upone their concealing, and quhais lands, guidis, or geir was confiscat, or componit for, quha confiscat the samyne and maid the compositioun; and gif my Lord did the samyne or nocht, it is to be considerit that the evil incli-

nation and unhappie nature of the iles people ar suche that, without streat lawis and ordinances, they ar not able to be dandonit or commandit; and the auld Dans lawis, be the quhilk they war governit, was so streatlie set down, that for small offences they losit their landis, gudis, and geir, sua that of all necessitie, streat lawis, statutes, and ordinances ma'n be maid against them, and it is an lauchfull deid to compel them to sweir that they sall conceil na vyce, bot reveil the samen, to the effect that vyce may be punishit; for in this realme it is ane commone custome, before the halding of justice-airs, to compel gentilmen and zeammen of the country to give up dittay against their neighbouris, and to caus them swear solemnly for that effect. And as it is leisom to compel them to give up dittay, so it is leisom, gif they be mensworne, to punishe them. And forder, it is desyrit that the compleinars produce some actis for verifying of the said complaintis, quilks, efter the production, sall be sufficiently answerit to and elidit; and having consyderation that my Lord is Justice Sheriff and Lord of Regalitie, his L. has sufficient power to use his jurisdiction upon the inhabitants of his jurisdictions; likeas my Lord, in the zeir of God 1591 zeirs, obtainit an commissioun of justiciary, with power to his L. to hald justice-courtis within the haille boundis of Orknay and Zetland, and to tak up dittays, punishe trespassouris, &c. sua that there is nothing conteinit in the said complaint bot that quhilk his L. micht have laughfully done.

As to the threid article, beirand that the Dutche and Ingleish strangers ar forcit bothe to pay custome to his Majesty and toll to the Erle of Orknay, &c., as the article beirs:

To that it is answerit, that all noblemen, within quhais boundis scheipis and crairis arrayvis, are accustomit to resave their deutie for their ground-leife, quhar there is no publict heavinis nor portis. And it is not condescendit fra quhat personis my Lord resavit the deutie conteinit in the said article. And quhat-ever strangers arrayving within his L. bounds voluntarily payis, that can be no ground nor argument to the inhabitants of the country to move any complaint; and his L. resavis no deutie bot that quhilk was accustomit to be payit to his L. ff thir divers zeirs bygane, and to his father of befor, and that pleasantly, without any grudge.

As to the fourth article, beirand, that the pure ones of the country ar forbidding to succour or reliefe any shippis distressit with stormis or tempestis:

To that article it is answerit, that the samyne is not relevant, never condescending how thir ar forbidding, and be quhom, and quha was punishit for succouring and helping of any shippis; and the truth is, that when any shippis was distressit or broke upon the costis, the people so miserable and unmer-

cifully invaddit the distressit persones, their guidis and geir, that no knowlege could be gotten thereafter of their particular introumissions; and when knowlege was gotten, it was found and tryet that there was houndit out the most pure, miserable, and deboichtit people of the country for doing of the said fact, quhom of no kynd of redress nor satisfactioun could be gotten; quhilk wyld and abhominable abuse being perceivit be my Lord, his L. very wysly and discretly ordainit, that no persons suld presume to invade sic persones as war distressit be sea, under pretext of their succour, quhile the baillie of the boundis concurrith with them, quha nicht put order to the insolent and barbarous forme of dealing; likeas my Lord, for their barbarous forme of dealing, was conveyit befor the Lordis of Sessioun at the instance of the Admiral for alledgit spoliation of the broking shippis.

As to the fyft article, beirand, that the inhabitantis of Orkney and Zetland ar extraordinarily compellit in service, without either meat, drink, or any allowance therfor, that thereby they will tend to an utter wrak :

To that article it is answerit, that the samyne is no way relevant, never condescending quhat kynd of service they are compellit to do, and quha was compellit to do the said extraordinary service; quhilk being condescendit, it sall be maid manifest and cleir, that they do no service bot that quhilk either they ar oblishit to do, accustomit to do, or does voluntarily; for when my Lord has any building or work ado, quhen he imployis their help, as uther noblemen and gentlemen of the country ar accustomit to do, they most willingly does the samyne, and giff the said work be ewest to my Lordis houses and dwelling, they are furnishit with meit and drink.

As to the saxt article, beirand, that the inhabitants are dischargit, be act of court, to pleid befor ony judge without Orkney or Zetland :

To this article, it is answerit, that that article is not relevant, not condescending whom be the said act was maid, gif the samyn was maid be my Lord or his depute: And, forder, it is to be considerit, that my Lord, having jurisdictioun of Sheriffship, regality, and justiciary, and knowing the malicious nature of the people, and that the most substantious and potent usit that form of oppressioun towards the mein inhabitants of the country, that they raisit malicious and fals summons befor the Lordis of Sessioun, and thereby compellit them either to come south and spend their haill moyen, or then, for their non compearance and inability to compear, they steilit false decreits against them,—wraikit and ruinith them,—tuik possessioun of their rowms, whereby most justly, for defens of the indigent against the potent, the said act might have bein laughfully maid; and notwithstanding of the making of the said act,

there was never person troublit for violatioun of the samyn; and albeit sic an act had bein made, yet that importis no kynd of cryme; and gif it micht import an cryme, trew it is, that the said cryme and punishment thereof only appertains to his Majesty. And the said nobil Erle being convenit for the said cryme and fault in the Parliament, halden at Edinr. the xi day of August 1607, his Majesty, be his warrant directit to his Advocate, commandit the Advocate to pass fra the said summons and haill crymes therein conteinit, and renunce *jure liti & causæ*, quhilk the Advocate did, as an act of Parliament maid yrupon beirs.

As to the sevint article, beirand, that the Erle presumis to forfalt men's heritage, banish their personis, confiscat their guidis, and restore them again, remit crymes, as gif he war a sovereign Prince :

To that article it is answerit, that the samyn is not relevant, never condescending in particular against quhom he ever usit the said form of authority and jurisdiction, without the quhilk the said article can no way be relevant; and the samyn being condescendit, shawin, and instructit be authentick write, shall have an sufficient answer: And, farder, according to the auld custom and form observit within Orknay and Zetland, the Erles of Orkney hes bein in use to punish trespassors, banish their persons, confiscate their guidis, and restore them again, quhairintil no cryme could be committit, in respect my Lord had the jurisdictions of sheriff, regality, and justiciary; and, mairover, his L. had given to him, in the moneth of November LXXXXI zeirs, an commission of leutenandry and justiciary, with power to sit upon all crymes, als weil treasonabil as capital, and to grant respites and remissiouns, quhilks sall be als valid as gif they war expeid his Majesty's ordinar seals; sua that no cryme culd be imput to my Lord for doing of the samyne.

As to the aught article, beirand, that the inhabitants of the countrey micht not pass friely over the ferries without passport:

To that article it is answerit, that there was no sic ordinance maid, and they ar not hable to produce or shaw sic ordinance, and giving the samen had been made, yet it conteins neither cryme nor offence, and passport was refusit to no man having an laughful and honest caus; and it is to be considerit, that the great dangers, inconveniencys, and innormities of the country movit sic ordinances to be maid; for the pest being in the south partis, my Lord micht have laughfully maid sic an ordinance for eschewing the inbringing of the pest in the country, and likeways their being great deidly feid betwixt my Lord Orknay and my Lord Caitnes, the inhabitants of Orknay and Zetland transportit my Lordis enemies both till Orknay and Zetland, and from the samyn. And, farder, the malicious na-

ture and inclinatioun of the people being so great that they being daily subject to murder, slaughters, thiftis, witchcraftis, and extraordinar crymes, they, for eschewing of punishment, war conveyit and transportit be barkis and boattis out of the boundis of Orknay and Zetland; for the remeid of the quhilks, the said ordinances of all necessity behovit to be maid, and micht laughfully have bein maid be my Lord, quha had the jurisdictionis of justiciary, sheriffship, and regality.

As to the nynt article, beirand, that the inhabitants of Zetland was compellit to pay the taxation of fourty hundreth angells:

To that article it is answerit, that the samyn conteinis no kynd of cryme, and the article is no way relevant, never condescending quhen the taxation was upliftit, and frae quhom; quhilk being condescendit, the samyn sall be sufficiently elydit, and sufficiently notifyt, that ether the taxatioun was upliftit by my Lord and his deputis as sheriffs and uptakaris of his Majesty's taxatioun, or then voluntarily given for guid and profitable uses to the country of Orknay and Zetland; and givand the said taxatioun had been upliftit without any just caus, as it was not, yet there can follow nothing thereupon bot civil actioun to the pairty fra quhom the samen was resavit.

As to the tent article, beirand that the King's Majesty's taxatiouns ar taken fra the inhabitants of Orknay and Zetland ten times exceiding his Majesty's taxatioun:

To that it is answerit, that that article is no way relevant, never condescending in special quhat taxatioun the samen was, quhom frae there was exactit moir nor the just taxatioun, quha was the exacteris and uplifteris of the samyn, quidder my Lord or other personis, or that the samyn come to my Lordis use; sua, in respect of the said generality, the said article merits no answer. And the said article conteins no kynd of cryme; for albeit the said article war special and trew, yet there followis nothing yrupon bot actioun of repetitioun against the uptakeris.

As to the elevent article, beirand that the inhabitants guidis and geir ar confiscate for intromitting with ony wrack or wathe quhilk is casten up be the sea:

To that it is answerit, That that article is no way relevant, never condescending quhais gair was confiscat, quhom be the proces of confiscatioun was led, quhidder be my Lord or his deputis, to quhais use the said gair come to; and, forder, it is to be considerit, that my Lord is infest in wrak and waire, sua that the hail wrak and wair pertains only to his L.; and quhaever intromittit yrwith committit manifest reife, stouth, and offence against his L., sua that justly they micht have bein punisht yrfoir: and the custom of Orknay, past memory of man, has

been to confiscat their guidis and geir for the said crymis, and for less crymis.

As to the twelf article, beirand that the Erle has compellit the inhabitants to contract to his L. the haill commodity of fischingis;

To that it is answerit, that the samyn is altogedder general and inept, never condescending upon the special form of the contract, the caus nor conditions therein mentionat, nor yet for verificationis of the said article produce they the said contract, quherby no direct answer can be maid to the said article. And quhensoever the said contract sall be producit, it sall be found very guid of the law, and laughful and profitable for the inhabitants; and albeit there had been an contract extortit, not granting the samen, yet it is not condescendit quhat violence was done, nor yet quhat damage or skaithe the inhabitantis has susteinit yrby, and the inhabitants has only an civil action for restoring of them against the said contract, and ther is no cryme to follow.

As to the thretteine article, beirand that Zetland was compellit to pay great sumes of money for consulting with an abuser callit Nerogar:

To that it is answerit, that that article is no way relevant, never condescending quha payit the soumes, quhat was the soumes they payit, and quhom to they war payit: and gifand that they had bein fynit for the said cryme, and compellit to pay soums of money for the said offence, that was laughfully done, seeing the cryme of witchcraft, sorcery, and consulting with them ar sic odious crymis, that in cais they had not been punishit the samen wald have overgain the haill isll, and after consulting they wald all have becommitt witches and warlocks; for the people ar naturally inclinitt thereto, and so was moist justly confynit be their Lord and master quha had jurisdiction above them.

As to the fourtein article, beirand, that their guidis ar confiscat for their not marking of their giudes or for wrong marking of the samyne:

To that it is answerit, that that article is no ways relevant, nocht condescending quhais guidis or geir was confiscat for the said cryme, or quha was compellit to compone yrfore; quha did the samyn, quhiddir my Lord or his deputis. And, forder, givand the samen had been done, it was laughfully done, according to the custome and forme of the countrey; for the people being so accustomit to thift, and to tak and apprehend their neichbours geir, thair wickit inclination movit to make the ordinance that they suld mark their own geir, so that they suld knaw their own geir, and pretend no ignorance in taking of their neighbour's geir; and gif they markit their neighbour's geir instead of their own, they committit likeways theft; and

gif penalties had not been enjoynit for the said cryme and offence, it had not been habile to nighbours to leive in peace to-gidder.

As to the fiftein article, beirand that my Lord ejected the ministers out of their gleibes, and spoilzies them of the half of the wol and tiend-lambis, &c.

To that it is answerit, that that article is noways relevant, never condescending quhat minister was ejectit or spoilseit, quha was the doer of the samyn; and that article conteins no cryme; and when his L. is convenit befor the civil magistrate for ejection or spoilzie, he is habile to elyde the samyne sufficiently; sua that that article contains only an civil persute, and aucht not to be cognoscit be the Lordis of Secreit Counsal.

As to the last and saxtein article, beirand, that my Lord will not suffer the inhabitants of Ballista to possess their lands and heritage, notwithstanding they war receavit yrto be ordinance of counsal:

To this article it is answerit, that the samymn is likeways general, never condescending quha is debarrit fra their possessions, quhat lands and possessions they ar debarrit fra, quhat rycht and security they obtainit fra the counsal of the samyn, sua that no direct answer can be maid thereto: and quhensoever they can be habile to condescend upon the particulars foresaids, they shall have an condigne answer. And it is marvellit quhat kynd of heritable security they could obtain of the counsal, seeing my Lord standis heritabil propriator of hail Zetland, either halden of his Majesty or of the Bishop. Always this article conteins no form of cryme or complaint to be decydit be the counsal, bot rather is an civil action to be movit befor the Judge-Ordinar.

It will pleas your Lops. after the reiding of the calumnies given in be the inhabitants of Orknay and Zetland, and answers maid thereto, quhilk sufficient elydis the samyn, to consider the evil inclinatioun of the people, quha ever has bein subject to all kynd of wyces and uprores, and specially to opone themselves to their master and overlord, and be their inventit calumnies to hald him in perpetual ward, that they may live without punishment or correctioun for their offencis and crymes. That therefore your Lordships would nocht only not respect their said calumnies, bot also tak order with them for ingiving of the samyn.

On the back thus:

ANSWERS to the Articles given in agains my Lord ORKNAY be the Bishope, the 25 Octob. 1611. A paper lately discovered in the General Register House: This whole defence is a direct justification of the facts charged, that they might all be lawfully done.

N. B.—The Privy Council, during the proceedings against Patrick Stewart, took upon itself to abrogate the Scandinavian laws and usages, and to declare that the law of Scotland only should be tolerated in Orkney and Zetland.* The records both of Orkney and Zetland, accordingly, bear evidence, from 1616 downwards, that this innovation was effected; but the local acts of a legislative nature were still continued.†

No. VII.

EVIDENCE respecting ORKNEY and ZETLAND LAWS, 1614.

It seems expedient, with reference to the arrangement which was accomplished in 1614, to state, in a condensed form, the evidence which is to be gathered from various records, relative to the district prior to that date, with respect to the subsistence of laws and usages in Orkney and Zetland totally distinct from those of Scotland. These consisted in a system of judicatories and police,—in the rules of succession to property,—in the tenure by which land was occupied by the owners,—the burdens by which it was affected,—the weights and measures,—and what may be termed the common-law usages of the province, as indicated by the records of its courts, all differing essentially from those of Scotland. And although the municipal law of Scotland, from the time of the excambion 1614, may have gradually, by inveterate consuetude, entirely extinguished the old jurisdictions and laws of inheritance; yet as the tenure of holding land, and the burdens by which it is affected, as well as the commodities and standards of value applicable thereto, *remain unchanged, and are protected by statute law and by custom at the present day*, it is proper to preserve the evidence which is still extant, and by which the rights of individuals and the community in the district may be now affected.

Besides the treaty in which the transfer of the islands was effected, we have the authority of Torfeus, the Danish historian, that the tributes of the province were to be paid to the

• Vide Act.

† Since the foregoing article was in types, a number of papers relative to Orkney and Zetland have been found in the Register House, (26th July 1822,) particularly the whole detailed charges, and the investigations thereon by Commissioners.

King of Scotland until it should be redeemed ; * and our own historian, Buchanan, in reference to the transaction, states, that the transfer was made only on the condition that the possessors of the lands should hold them in the same manner as they had previously done.† Accordingly, in all the leases and grants by the Scottish government, which are now accessible, we find the laws, jurisdictions, and usages referred to.

In a grant to Gilbert Balfour, master of the household to Queen Mary and Darnley (in 1565) as governor, he was appointed to administer justice according to the laws of the islands. This was followed in 1567 (6th Dec.) by the act of Parliament, that Orkney and Zetland were to be subject to their own laws, and not to the common law of Scotland. In the grant to the Lord Chancellor and Lord Justice-Clerk, 1587, they are invested with power to hold the head courts called Lawtings,‡—to appoint Fouds under them,—and to administer justice “*secundum leges et consuetudinem patriae Orcaden. et Zetlandiae.*” And in various charters to Robert and Patrick Stewart, down even to the very last in 1600, they are burdened with the same duty of exercising their authority on the principles and in the forms established in the province.§ And for farther evidence to the same effect, reference is made to the several charters to Balfour, Moodie, and others, as printed at pages 4–8 of this Appendix ; in all of which the laws of the province, as a distinct code, are specially mentioned, and a deviation therefrom in the single point of *succession* is declared. The original charter to Moodie is extant in the possession of Mr Watt of Breckness ; and I take this opportunity of expressing my thanks to that gentleman, to Captain Balfour, and Mr Samuel Laing, for the frank and unreserved manner in which they have communicated to me every document and manuscript in their possession which I wished to examine.

In stating the evidence to establish the subsistence of the Norwegian laws and customs in Orkney and Zetland betwixt

* “*Literæ, quoque Hafniæ, &c. ad subditos Orcadenses et Hialtlandos scriptæ, Regique transmissæ quibus iis obsequium Regis Scotiæ tributæque, ei quotannis pendenda imperata, donec ipse vel sui successores, Reges Norvegiæ Orcades & Hiallandeam persetuto debito redemerint.*”—Torfæus, Lib. II. p. 188, 189.

† — “*tantum ut privatis agrorum possessoribus caveretur, ut agros, quos ibi haberent, uti ante possederant, ita tenerent.*”—Life of James III.

‡ “*Cum potestate Curias Capitales vocat Lawtings assignandi,—et easdem, quoties opus fuerit constituendi.*” And in the reddendo, “*Agen. et facien. nobis et successoribus nostris pro dictis officiis justiciarii et foudriæ,—debitam et legitimam administrationem justitiæ, leges et inculis dictarum patriarum Orchaden. & Zetlandie, aliisque quibus decet, secundum leges et consuetudinem earundem, et formam justitiæ ut eisdem prius usitatam.*”

§ Vide Charters, Appendix.

1468 and 1614, I have confined myself strictly to such testimony and documents as seem least liable to exception or controversy. In farther proof, I may refer (as relates to the denominations of land, weights, scats, &c.) to all the rentals, and to every charter in the district. "In the udal rights of lands in Orkney and Zetland, whereby, without any infestment, investiture, or other right or writ, they enjoy lands and hereditaments, it sufficeth them to instruct, by witnesses, that they have possessed, as being holden and repute heritable possessors of such lands; but the law and custom of Scotland hath in all other places necessarily required writ, not only for evidence of the constitution of this right, but as solemnities for the perfecting and solemnizing thereof, without which it becomes not a complete real right of the ground," &c.—Stair's Institutions, Book II. tit. iii. sec. 11. p. 202.

"The udal rights of Orkney, by the peculiar customs of the isles of Orkney and Zetland, give the same right as infestments, and thence arise the same petitory actions."—Ibid.

I have carefully forborne from any formal disquisitions on the etymology of the terms *udal* and *scat*, being more anxious to ascertain the practical than the philological meaning of those vocables. Neither have I thought it necessary to inquire, whether the udal right could be constituted with or without writing; and whether or not the scat was payable originally for the pasture or for the arable lands? On the former of these points, my own opinion is, that the right of the udal-born was inherent in them, without the formality of any written record or instrument; but that, in order to complete that right, so as to bar all competition and debate, a solemn recognition of it by the lawman and neighbours, and an entry of that recognition in the law-book or other document, were necessary. With respect, again, to the *scat*, whether it was originally payable for the arable lands or pasture, seems to be now a matter of little importance, since it is established by the most antient rentals, and the usage of above three hundred and fifty years, that that land-tax has been annexed as a burden to arable lands and privileges of pasture on the moors, without distinguishing whether the scat be for the one species of possession or the other. And as it is an acknowledged burden on the several properties, it becomes more a subject for mere antiquarian research than of substantial use to inquire into this point. Dr Hibbert, in his recent work on Zetland, has engaged in the discussion of this matter, and indeed of whatever regards the interests of Zetland and its wrongs, with a zeal which was to be looked for only in a native, and with a kindness and generosity of feeling worthy of an English gentleman. I refer to his work for various authorities which he quotes on the subject; and I need only add, that his theory derives seemingly

a confirmation from the tenor of many entries in the old rentals; in which it is said frequently, that a particular town "pays no scat, quia quoyland," &c. that is, because the property and its privileges are all surrounded with a dike, and the privileges of pasture, feal, and divot, &c. do not extend to the hill or pasture-land. "*A ringit quoy*," is a phrase quite common among the country people in Orkney, as denoting a property having no rights beyond its dyke; but the *scattald*, or exclusive privilege of pasture recognized in Zetland, is not known in Orkney, and the hill-pastures there are generally in common. The "scat" being of old distinguished from the "land-schuld," or "skyld," or "land-mail," affords also a presumption that these were formerly different kinds of land-duty, applicable, perhaps, the former to the pasture, and the latter to the arable grounds; but they have long been conjoined with the teinds, and are often blended *in cumulo*.

Dr Hibbert has kindly communicated to me an original document, which is at once a complete proof that the Orkney and Zetland laws were in full force in 1610, and an exemplification of the mode in which it was carried into operation. It is intitled, "Testimonial for Edward Sinclair of Marrassetter," and is subjoined to this note.

It is curious to trace, in the history of these islands, an illustration of the effects of partitioning landed property among all the children of the proprietors, instead of adopting the succession by primogeniture. By constant subdivision, generation after generation, the whole land is liable to be parcelled out in the most minute portions; and we have at the present day numerous instances of petty proprietors in Orkney, who are the most destitute, abject, and helpless creatures imaginable. Such persons have accordingly been constantly, for centuries past, the victims of oppression by the petty tyrants, who, at different times, have lorded it over them, from Lord Robert Stewart down to the cormorants of more recent times. Too poor, as individuals, to resist the oppressor singly, and destitute of intelligence and the strength which union confers, they sink, one after another, before the machinations of some wealthy and avaricious neighbour. Instead of presenting a barrier, like a wealthy landed aristocracy, to the approaches of illegitimate power, they become, in detail, its easy victims, and finally the ministers of its designs. The adoption of this principle in France, of subdividing a man's landed estate among all his children, is calculated to produce a most alarming despotism; and although M. Malthus has cautiously refrained from speaking decisively on this "fearful experiment," he points out very sagaciously the tendency of the system,*—a tendency which I

* "The owners of the minute divisions of landed property will be, as they always are, peculiarly without resource, and must perish in great numbers in

have often thought well illustrated by experience, on a very limited scale, indeed, during a period of some centuries in the Orkney and Zetland islands. The result of this policy in France will, I have no doubt, be fully developed; and other revolutions and military despotisms will again rise in that country, and stalk over the face of Europe, to deform and to destroy.

TESTIMONIAL for EDUARD SINCLAIR of Marrassetter.

Till all and sindrie quhome it effeiris, to whaus knowlege thir presentis sall cum, we undersubscryvand eirs testifie and beir witnes, that in all tymes bygane, past memorie of man, thair has bene ane ancient law, custome, and consuetude within the country of Zetland, be the quhilk it has bene inviolablie observit, that quhan ony landitman haveand landis within the said cuntrey depairtit this mortall lyffe, the haill lands and heretage appertening to him in his lyfetime, immediately efter his deceis, war equallie and lauchfullie divydit amangis his haill bairnis, alswell sones as dochteris, comptand alwayis twa sistars partis for ane brotheris pairt; and being sua divydit, the eldest brother had na farder prerogative abone the rest of his brether except the first choise of the pairtis and parcellis of the landis divydit:—*And* that it is trew and of verritie, that umquhile Henrie Sinclair of Burgh, deceassand at the faith and peace of our umquhile soverane Lady MARIE, be the grace of God, Quene of Scottis, left behind him four sones in lyffe; viz. umquhile Hew Sinclair of Burgh, his eldest son, Captitane Wiliame Sinclair his secund sone, Eduard Sinclar of Marrassetter his thrid, and umquhile Oliver Sinclair Esthous the fourt, thay than being all minors, of the aige of four, fyve, or sax yeiris or thairby; and during the tyme of thair minorities the rentis of the haill landis and heretage, togidder with the haill moveabill guidis pertening to the said umquhile Henrie the tyme of his deceis, war intromittit with and uptaine be the said umquhile Hew Sinclair, the eldest of the saidis four brether, his tutors and curators for the tyme; and at the perfyte aige of the

every scarcity. Scarcely any will be rich," &c.—“The state of property above described would be the very soil for a military despotism. If the government did not adopt the eastern mode of considering itself as sole proprietor, it might at least take a hint from the economists, and declare itself co-proprietor with the landlords;”—“it would then possess an overwhelming influence, which, in such a state of things, nothing could oppose. The despot might now and then be changed, as under the Roman emperors, by the Prætorian guards, but the despotism would certainly rest upon very solid foundations.”—*Principles of Political Economy*, p. 434, 435.

said umquhile Oliver, the said umquhile Hew, conforme to the said antient law and custome inviolablie observit within the said cuntrey of Zetland as said is, delyverit and resignit to the said umquhile Oliver his brotheris pairt, being a fourt pairt of the landis and heritage pertening to the said umquhile Henrie the tyme of his said deceis, to wit, aughtene merk-land in Esthous in Quhytness, aucht pennyis the merk,—sax merk-land in Wodbuster, in Quhytness, sax pennyis the merk,—sax merk-land in Hagrasetter, sax pennyis the merk,—aucht merk-land in Kirk-yord in Weisdail, aucht pennyis the merk,—four merk-land in Westay in Aithsting, nyne pennies the merk,—and four merk-land in Burgh at Zelsound, within the parochine of Delting, nyne pennyis the merk; quhilkis landis, as being the fourt pairt of the haille landis pertening to the said umquhile Henrie Sinclair of Burgh, the said umquhile Oliver, his feird sone, bruikit and possesst fra the time of his entrie thairto (quhilk was in the beginning of his perfyte age) continuallie to the day of his deceis, be the space of twentie-aucht zeiris togidder, as his awn proper land and heritage, halden frielie of the King for payment of scat and wattell, and of the teyndis yrof (to) the kirk, according to the custome of the said cuntrey, and as is payit be vtheris heretors of landis within the samyn, but stop, trubill, impediment, contradictioun, or interruption maid thairto be ony persone or persons quhatsumevir. And that it is lykewayis trew and of veritie, that the said umquhile Oliver Sinclair deit in peciabill possessioun of the landis particularlie above namit, as his awin proper landis and heretage, haldin be him as said is, for payment of the dewtie foirsaid, at the faith and peace of our Souerane Lord James, be the grace of God King of Grit Britan, France, and Ireland, defender of the faith; and that the said Edward Sinclair of Marrasetter, is neirest and lauchfull air to the said umquhile Oliver Sinclair, his brother, off all and haille the landis abone-written; and that he is of perfyte aige. Quhilks all and sundrie premisses we undersubscrivand testifie to be trew and of veritie, to all and sundrie quhome it effieris, be thir presentis, subscrivit with our handis at Skalloway Bankis, the twentie day of Julii, the zeir of God Jm, vic. and ten zeiris.

EDWARD SCOLLAY of Stryne, Sheff-deput. of Orknay and Zetland.

J. SINCLAIR, fear off Quandell. ARTHUR SINCLAR of Aythe.

HA. SINCLAR.

ALEX. THOMASONE, Fould of Thingvell.

ANDRO WMPHRAY off Berrie.

ALEXANDER BRUCE, No-rius.

This document is deposited by Dr Hibbert in Mr Thomson's office, Register-House, where a charter chest has been put for

the collection and preservation of papers connected with Orkney and Zetland. It is requested, that gentlemen, who from time to time may discover in their depositories any manuscripts relative to this province will place them in this depot, where a regular inventory of them will be made, and where they will be preserved with the greatest care.

I cannot omit this opportunity of expressing my most sincere thanks to Mr Thomson, and all the gentlemen in his chambers for the numerous instances of their kindness and liberality in giving me every information and assistance to researches among the public records in their department. I can truly say, that more zealous and disinterested individuals in every matter connected with the ancient records of the kingdom, do not exist; and I shall never forget the civilities which I have experienced from them all.

No. VIII.

NOTICES relative to the last Expedition of the Marquis of MONTROSE.

EXTRACT from WISHART'S Life of MONTROSE.

The preparations for the invasion of a kingdom already settled in a posture of war, and well forewarned of his intention, amounted not in all to above the number of six or seven hundred, foreigners included. Most of the common soldiers who adventured with him, were from Holstein or Hamburgh. He received from the Queen of Sweden, for the arming of such gentlemen as should join his party upon his landing, fifteen hundred stand of arms, compleat for horse, consisting of back, breast, head-piece, carabines, pistols, and swords; all which were taken untouched after his defeat in Caithness.

With so small an army, and so little preparation, to attempt a business of that weighty nature, was a desperate action. And although his touching first upon the islands increased his numbers, and gave him almost the beginning of an army, yet were those barbarous people so raw, and unacquainted with discipline, that they proved in a manner useless and unserviceable.

"Tis true, that the inhabitants of these isles were in former times a very fierce and warlike people, and have often under their own captains made deep impressions into the very heart of the kingdom; but whether it was the policy of the late kings to leave them untrained, on purpose to break and subdue their natural fierceness, or that, their own chieftains being quell'd or cut off, they cared not much ever to engage under any other; certain it is, that the kings of Scotland, for these two hundred years last past, have not made less use of any part of their subjects, nor is there at this time a worse opinion entertained of any part of the Scots nation for valour and military courage. And this may be alleged as a great cause of their being so unserviceable and remiss in the Marquis's service.

Of the whole strength that accompanied Montrose from Germany, which, as already noticed, was far from being considerable, he sent off about a third part before himself in two vessels, who meeting with stormy weather, which is both frequent and dangerous among these northern islands, were lost, with all the men and arms. This was another check, and, as it were, a warning and fore-runner of the sad event which followed; but being led on by a fatality to his ruin, he behoved to contribute his own endeavours towards that destruction which his cruel fortune had provided for him: for, nothing dismayed with what had already happened, he dispatched a second party, who, making a more prosperous voyage, landed safe at Orkney, and entered the island without any resistance; there being at that time no garrison or defence placed by the estates in any of these islands. With these troops he had sent several commissions for levying horse and foot, which were immediately dispatched to the continent of Scotland, and the islands adjacent, for that purpose. The people of the country being in no condition to resist these officers, endeavoured, in hopes of favour, as much as they could to promote the design: and such as were not so forward, were forced by their own neighbours who favoured the cause, and the violence of these recruiting officers, likewise to take up arms.

Not long after landed the Marquis himself, with the rest of his company, together with those gentlemen who were resolved to partake of his fortune; amongst whom were several persons of note, as the lord Frendraught, colonel Urry, a man who had engaged in all quarrels but never prospered in any, colonel Johnson, a resolute and old soldier, colonel Gray, a German officer Henry Graham, the Marquis's own natural brother, colonel James Hay of Naughton, Sir Francis Hay of Dalgety, and George Drummond of Balloch. His kinsman the lord Napier was left in Holland; and colonel Sibbald, his old companion, had been employed by him as his agent in Scotland, but was apprehended at Musselburgh, and accompanied his general in death, upon the same scaffold.

The Marquis continued a considerable time in Orkney, raising forces and strengthening himself with such recruits as the place could afford. Neither were there any preparations made at all in Scotland to dispossess him of these islands, either because it was a difficult affair to assail him within those places, naturally guarded by a rough and dangerous sea, or because, as they knew his strength, they expected a better opportunity of destroying him, which indeed they soon after found, within the country.

At last he resolved to embark, and for that purpose, gathering all the boats he could find amongst the isles, he shipped his men, and soon landed them upon the utmost point of Caithness, which is the farthest land on the north-east part of Scotland. The people there, having had some experience of the carriage of his former soldiers, and now far more dreading the name of foreigners, and their panic being also increased by the dreadful reports which were industriously and constantly spread of him, fled away in great numbers, and many of them never stopped till they came to Eninburgh, where they gave a terrible alarm to the Parliament, who were sitting there at the time. The commanders were immediately summoned, and charged with all possible haste to get the standing forces in readiness; and a rendezvous, in obedience to the command of the estates, was thereupon presently appointed at Brechin. Colonel Strachan, who was then in high esteem with the great ones for the late instances of his valour in the English service, and his zeal to the Presbyterian cause, which was much extolled at that time, had an ample and particular commission granted to him by the Parliament, to command a choice party of horse, without being subject to David Lesley's orders, and to engage and fight the enemy at the best advantage: and with these, which were not above three hundred, he advanced before the army; David Lesley with the remainder of the horse, and general Holburn with the foot, marching after him.

In the mean time the Marquis advanced but slowly; and that his designs might not be mistaken by the world, who were all much astonished at this invasion, at a time when the King was upon a treaty with his subjects, he published a declaration, wherein he laboured to clear himself from the aspersion of having any sinister ends: that his intention was only against some particular persons, who had, contrary to the laws of the kingdom, raised and maintained a war against the King's father, and were now by their subtile practices endeavouring to destroy the son also; but that he intended nothing against the generality of the kingdom: and exhorted all his fellow-subjects to free themselves from the tyranny of those who for the present ruled the state, and from the oppression of the ministry.

The country for several reasons did not come to second him as

he expected ; for the Earl of Sutherland, a powerful man in these parts, and whose estate lay in the neighbourhood of the place where the Marquis then was, raised a great number of his tenants and friends, and did what he could to hinder and terrify all that were willing to join him ; and though he found himself unable to deal with the Marquis's forces, yet he effectually stopped all intercourse betwixt him and his friends. On the other hand, those gentlemen who had hitherto followed the Marquis, and were sufficiently inclined to assist him, knowing the danger of the enterprise, and considering the smallness of his army, and that his soldiers were entirely undisciplined, and very unlike to the former, with whom he had performed so many great actions, began to be averse, and entertain suspicions of the event : yet many who were intimately acquainted with the situation of the country, were of opinion, that, had he not been overpowered in the nick of time, he might have gained such strength among the hills, as would have given him leisure enough to have increased his own party, and tired out the enemy. However, he was not altogether unmindful of a retreat. There is in that country a castle called Dunbeath, the laird of which was the head of a very ancient family, but no friend to the Marquis ; and upon his approach, he had left his house in the keeping of his lady and servants, and fled to Edinburgh. The lady, though the place was naturally well fortified, delivered it up on the first summons to colonel Urry, who was sent thither by the Marquis with a party of foot to reduce it, upon condition that her goods and estate might be secure, and she with her servants allowed to march off. Urry, having placed such a garrison in it as he thought sufficient for its defence, returned to the Marquis, who was now advanced to the place, or near it, where he was to lose at one throw his liberty, life, and fortune. Hearing of the enemy's approach, he made his whole forces march at a good rate to recover a pass which they were not far from ; when he himself in the van-guard discovered the first party, which was Strachan's forlorn hope, advancing very fast upon him ; and when they came up, they found Montrose's men quite breathless and out of order. The second party of the enemy was commanded by Strachan himself, and the rear-guard by colonel Ker ; for he had divided them into three bodies. The first party being now very near, there was a forlorn hope of a hundred foot drawn out to meet them ; who firing upon them, put them to a disorderly retreat : but being immediately seconded by Strachan's party, they made good their charge, and so terrified the islanders that most of them threw down their arms, and called for quarter. The Dutch companies, after they had bestowed a volley or two among the horse, retreated into some shrubs hard by, and there defended themselves very valiantly for some time, but were all taken at last,

There were killed to the number of two hundred, and twelve hundred taken, very few having escaped: for the whole country being in arms, especially the earl of Sutherland's people, who came not to the fight, but to the execution, they killed and took prisoners all that fled. The standard was also taken, which Montrose had caused be made of purpose to move the affections of the people, with the portrait of the late King beheaded, and this motto, *Judge and revenge my cause, O Lord!* the standard-bearer, who was a very gallant young gentleman, being killed, after he had several times refused quarter. Among the prisoners were colouel Ury, the lord Frendraught, Sir Francis Hay of Dalgety, colonel Hay of Naughton, colonel Gray, with most of the officers, and two ministers.

The Marquis, after he saw the day was absolutely lost, threw away his cloak with the star upon it, having received the order of the Garter some time before: his sword was likewise found, and, not very far off, his horse, which he had forsaken; for how soon he got clear of the ground where the skirmish was, he betook himself to foot, and lighting by chance upon one of the people of that country, he changed clothes with him, and so conveyed himself away in the fellow's highland habit. There was a very narrow search made for him, so that he could not long escape; yet he continued in the open fields three or four days, without their getting any notice of him: at last, the laird of Assint, being abroad in arms with some of his tenants in search of him, lighted on him in a place where he had continued three or four days without meat or drink, and only one man in his company. Assint had been formerly one of Montrose's own followers; who immediately knowing him, and believing to find friendship at his hands, willingly discovered himself: but Assint, not daring to conceal him, and being greedy of the reward which was promised to the person who should apprehend him by the council of the estates, immediately seized and disarmed him, 'Tis said, he proffered great sums for his liberty; but finding that in vain, he desired to die by the hands of those who took him, rather than be made an object of shame and misery by his enraged enemies, which he well knew would be his fate: but neither of his desires were granted; and a strong guard was immediately set over him, who conveyed him to David Lesly.

There was nothing else to be done, but to reduce the islands and the town of Kirkwall in Orkney, where colonel Johnson and colonel Hary Graham were left, when the Marquis passed over to Caithness: but either because he could not spare any soldiers, or because he expected better success, he had left them almost defenceless, though there were several places in these isles which might have been made very tenable. Upon

their hearing of the defeat, they immediately took shipping, with the rest who were left along with them, and returned from whence they came ; otherwise both of them had undergone the same fate with their general. Thus Lesly's forces entered without any resistance, and seized upon the arms which Montrose had brought thither, together with two pieces of ordnance. The Queen of Sweden had given him a little frigate of sixteen guns, which lay in the harbour, and the master being gone ashore into one of the islands, the company seeing the event, revolted, and brought in that likewise.

The victory being now complete, there was a solemn day of thanksgiving appointed throughout the whole kingdom, and observed with bone-fires, shooting of guns, and other demonstrations of joy : but many of the gentry, who had been formerly under Montrose's command, and had now engaged to join him again, were no partakers of this joy : for his papers being taken many of them were afterwards discovered, and suffered in their estates.

The marquis being now in the custody of his mortal enemies, from whom he could not expect the least favour or mercy, yet expressed a singular constancy, and in a manner an indifferency of his condition : coming to the house of the Earl of Southesk, his father-in-law, where two of his children were kept, he procured liberty from his guard to see them : but neither at meeting nor parting, could any change of his former countenance be discerned, or the least expression heard, which was not suitable to the greatness of his spirit, and the fame of his former actions. His behaviour was, during the whole journey, such as became a great man ; his countenance was serene and chearful, as one who was superior to all those reproaches which they had prepared the people to pour out upon him, in all the places thro' which he was to pass. It is remarkable of the town of Dundee, where he lodged one night, that tho' it had suffered more by his army than any other within the kingdom, yet were they so far from insulting over him, that the whole town testified very great sorrow for his woful condition ; and here he was furnished with clothes suitable to his birth, in place of that ordinary dress in which he was taken, which Lesly would not for some time allow him to change.

DECLARATION by JAMES BUTTER, who exercised the Offices of Commissary-depute, Sheriff-clerk, and Sheriff depute within the Bishopric of Orkney for the years 1648, 1649, and 1650, till the middle of July 1651, made by order of a Committee of the Council of Edinburgh, anent what he knew of uplifting the Rents of the Bishopric of Orkney for the foresaid three years.

DECLARES, That, in the year 1648, being the first year of the tack, was a bad crop in Orkney both for corn and bestial, there being then a famine among the poor people, and the scarcity was so great that the Earl of Morton was forced to send a small vessel to Murray for oat-meal to serve his own house, and all that was sent to Leith out of the earldom that year was seven and thirty chalders, or thereby, of Orkney bear and malt, &c.

As for the crop 1649, by the testimony of several honest men in Orkney, the same was a very good crop for corns, but the tacksman could reap no benefit thereof; Montrose's forces coming to Orkney in the beginning of September 1649. The said James Butter being then in Zetland about the Earl of Morton's affairs, and the tacksman at Edinburgh; and James Butter returned from Zetland to Orkney about ten or twelve days after the arrival of the forces, where he found the Earl of Morton at Kirkwall, carrying himself not only as chief commander of the said forces, where about the said Earl and the Earl of Kinoul fell out, but also as heritor of the said bishopric, which he affirmed he had received in gift from the King, and thereupon did constitute one to be chamberlain thereof and another to be under receiver of the rents, who uplifted several of the duties before the Earl of Morton's death on the 12th of November 1609. That, about six weeks before the Earl's death, the tacksman arrived in Orkney, who, presently after his landing, was, by order of the Earl of Morton, imprisoned, and continued till after the Earl's death, under pretence he was come from the enemy; and, before the tacksman's arrival in Orkney, there was thirteen or fourteen meils or bolls of meal and malt in Kirkwall pertaining to him, with the haille peats of the bishopric, seized upon by the soldiers by order of the Earl of Morton; and, in respect the declarant before the committee of war at Kirkwall had protested against the Earl's meddling with the bishopric, not only for crop 1649, but also for the rests of the said ill crop 1648, then almost all owing, except what was uplifted as aforesaid; and likewise in regard the declarant had intimated to divers of the vassals of the Bishopric that the Earl of Morton's pretended donation from the King was only a forgery, and that all the rent they had paid to him would be again exacted by the town of Edinburgh, the

said Earl, in the said committee of war, discharged (but he termed it deprived) the declarant from the commissariat, sheriff-clerkship, and other offices he had in Orkney, notwithstanding he offered to show the Earl his right thereto, and that it noways flowed from him; nevertheless, finding the Earl and the Earl of Kinoul at variance about the chief command of the soldiers, the declarant thereupon did take occasion to keep Commissar-Courts, and so kept possession of that; but for the rents of the Bishopric, the Earl of Morton having entered the soldiers in possession thereof, there was no way to make him desist therefrom,—for the Earl of Morton had given orders that no part of the rents of the Earldom should be meddled with till first the rents of the Bishopric for the crops 1648 and 1649 were fully uplifted by the soldiers; and as for the bond the Earl of Morton gave to the vassals and tenants of the bishopric, for their relief of the rents, that he should uplift from them the said two crops, the same did bear a great untruth in the narrative; and, immediately upon granting thereof it was put in the Register, and the Earl of Morton's party having threatened to break up the declarant's office in Kirkwall, and take away the principal bond forth thereof, the declarant hid the same in a private place till the tumults were over, and, in the meantime, he dispersed several extracts thereof under his subscription and after the Earl's death; those whom he had entered into possession of the rents of the bishopric still continued in possession thereof, and enlarged their quarters upon the Earldom itself, till the very day that Montrose and his Orkney forces took shipping at Holm to pass to Caithness, *which was about the beginning of April 1650*; during which time of quartering through the Bishopric, the poorer sort of the tenants and the small udallers did pay their rents to the soldiers and their collectors, to the uttermost, for crop 1648 and 1649. But the declarant could not attest so much for the gentry and more powerful feuars within the Bishopric, especially such as were collectors of the rents of the parishes in which they dwelt, whereof they say they made payment to Morton or Montrose, or their chamberlains, and perhaps they would show discharges; but the declarant told some of them that the truth of such discharge was questionable, and he suspected that the very acceptation of such an office, flowing from him that had usurped the town of Edinburgh's rents, should demand the exacting with rigour from them, during the time of the tacksman's imprisonment, and till Montrose and his forces went out of Orkney. The declarant had much ado to persuade the common people that their rents were not for the Earl of Morton, who, by his factor, had uplifted the rents crops 1648 and 1649; and he thought it would be no prudence to use arrestment, they being at that time in a rebellion opposing a levy which was appointed to be converted into money,

which was to be given to Quarter-Master-General William Stewart. However, he received as much as satisfied him of his debt, and so brought the common tenants again in use of payment to their right masters; and, about the same time, the declarant used arrestment upon the foresaid bond of relief of the Earl of Morton's upon the rents of the Earldom then owing; but it was in vain, for the vassals still paid their duties to the Earl's chamberlain.

Item, the said James Butter declared that, by divers words which he heard and passages of things which he marked before Montrose's forces came to Orkney, and by some papers that he saw taken out of the Earl of Morton's closet at the up-braking thereof by Captain Collace at his coming to Kirkwall with his troop of horse, after the defeat of Montrose, that by these things he was induced to believe that what forces Montrose had to Orkney was by the invitation of the Earl of Morton.

EXCERPT from County Record.

In a Petition and Memorandum by the Gentlemen of Orkney to Lord Morton, (9th October 1662) it is stated, " That in the
 " years 1649 and 1650, they did for the space of seven mo-
 " neths quarter and mentain his Majesties whole forces, then
 " under ye command of the renowned late Marquis of Mon-
 " trose; and when his Excellencie advanced from Orkney to
 " Caithness, they did outreik 2000 effective well armed men,
 " with their lieviey and transport money, with their officers un-
 " der command of his Excellencie. Besyd considerable soumes
 " of money your Lordships petitioners did then chearfully ad-
 " vance to Sir William Johnston, whom his Excellencie did
 " commissionat to be Governour of Orkney after his depar-
 " ture. And after his Majesty's arrywall in Scotland, though
 " the requyred levies were a little interrupted by a vigamorish
 " insurrection amongst the clownsand commons of this countrie,
 " headed by one Currey, (who did imprison most of your Lord-
 " ships petitioners or their fathers) yet so soon as Sir Ja. Douglas
 " appeared authorised by his Majesty for a lieviey, and to dis-
 " charge all lievieyes of moneys, horse, or foot, formerly requy-
 " red, your Lordships petitioners did so vnanimously concurre
 " with him, that within less then two moneths after his arryveall
 " Currey was apprehendit and imprisoned, the mutiniers were
 " quyeted, and Sir Ja. had all the lieviey he did require."

They state, " that they were the only shyre in Scotland that
 " advanced his Majesty's service under the Marquis of Mon-
 " trose. That the whole heritors within this shire were at the
 " charges of a whole year's rent by the quartering and outreik
 " of the forces; and that, besyds the loss of near 2000 com-
 " mons in that service," there was almost no gentleman's house
 " in this countray but lost aither a sone or a brother." " In
 " August 1650, one Major Campbell, and several officers with

“ him, was sent hither by the Committee of the Estates for a
“ levy of 400 foot. That act of the committee was just made
“ when Montrose lay among us; and though our men were all
“ spent, yet because it was said to be for his Majesty's service, we
“ were witnessing our readiness, when one Robert Stewart Ma-
“ jor, &c. arrived here with severall other officers having order
“ from the then Committee of Estates, fortified by his Majesty's
“ letter in his favour, ordering a levie of 300 horse from this
“ shyre; and because there was no horse in it, the charge of the
“ then committee, &c. was such, that they appoynted us for
“ every horseman 300 merks. Your Lordship cause cast up
“ this account. Your Lordship will find it to amount near a
“ year's revenue to your Lordship and all your vassals in both
“ countreys, (Orkney and Zetland.) Notwithstanding that this
“ burden was very grievous, yet wee were thinking on nothing
“ but obedience, when, on a sudden, most of the whole commons
“ in the countrey rose in insurrection, headed by one Currey,
“ and two or three other base fellows yet alive and drew in
“ arms to the fields at any time for the space of six months to-
“ gether, to the number of 600 men; so yt. your Lordship's
“ petitioners could not meet to debate public busieness; and
“ when some of them did meet, some of them were chased out
“ of town, others harld from their lodgings to prison, and others
“ fyrd upon by these clowns.”

“ In January 1651, one Major Melvill arrived here with or-
“ der from the Committee of Estates for leiving of two troupes
“ of dragoons from this shyre. The gentlemen of ye country
“ could not meet with him. But those mutineers did soundly
“ bang them as they formerly banged, imprisoned, and driven
“ out of this countrey Campbell and his officers.”

“ The cabal of these commons continuing in their meeting
“ and mustering of armed forces, hindering all meetings of the
“ shyre, continuing till Aprile after, at which tyme your
“ Lordship's uncle Sir Jas. came into this countrey with com-
“ mission from his Majesty to levy a regiment of foot from the
“ shyre, and to discharge all former levies both of horse, foot,
“ and moneys. At his first entry the mutinous vigamores
“ offered him such entertainment as they offered the former
“ officers. But the countrey gentlemen gathered heart when
“ they saw him clothed with his Majesty's owen commission,
“ convened themselves, and cordially joyned with Sir James;
“ and in short space apprehends Currey, and other leaders of
“ the mutineers, and delyvered them to Sir James, (who, if he had
“ pleased, might have caused hang them all.) Whylest Currey
“ was in prison, the gentlemen, and their friends under Sir
“ James command in the open fields, quells the mutineers, and
“ quyet the mutiny.” “ Six hundred men were raised, and cash
“ supplied for their army, levy, conduct, and transport money,
“ being about ten thousand merks.”

No. IX.

RETURN by the SHERIFF-SUBSTITUTE of the County of ORKNEY of the Population of said County, and of the Increase or Diminution thereof, in terms of the Act of Parliament 1st GEO. IV. cap. 94.—in 1821.

COUNTY OF ORKNEY. PARISHES AND ISLANDS.		Inhabited Houses.	Males.	Females.	Total of Persons.
I. MAINLAND.					
Andrew's, Saint	Parish	155	382	475	857
Birsay	Parish	364	687	839	1,526
Dearness	Parish	134	313	378	691
Evie	Parish	171	349	462	811
Firth	Parish	127	233	312	545
Harray	Parish	158	328	391	719
Holm and Paplay	Parishes	145	341	432	773
KIRKWALL	Burgh	309	938	1,274	2,212
Ola Saint	Parish	154	491	543	1,034
Orphir, with Cava Island	Parish	180	407	499	906
Rendall	Parish	96	240	278	518
Sandwick	Parish	133	433	497	930
Stenness	Parish	125	280	316	596
Stromness	Burgh of Barony	385	940	1,296	2,236
Stromness	Parish	123	308	400	708
Totals in Mainland		2,759	6,670	8,392	15,062
II. SOUTH ISLES.					
Burray	Island	50	116	129	245
Copinshay	Island	1	6	4	10
Flotta and South Faira	Islands	52	144	153	297
Græmsay	Island	34	104	116	220
Hoy	Island	45	127	161	288
Walls, contains	Island	} 61 94	158	196	354
North Walls	Parish		277	318	595
South Walls	Parish				
Ronaldshay, South, contains St Peters, or North Kirk	Island	} 275 117 8	654	742	1,396
Lady or South Kirk	Parish		246	307	553
Swannay and Pentland Skerries	Island		22	15	37
Totals of South Isles		737	1,854	2,141	3,995

Return of Population continued

COUNTY OF ORKNEY. PARISHES AND ISLANDS.			Inhabited Houses.	Males.	Females.	Total of Persons.
III. NORTH ISLES.						
Eday and Pharay	Island		125	324	349	673
Egilshay	- Island		40	110	116	226
Enhallow	- Island		3	4	7	11
Gairsay	- Island		12	35	44	79
Ronaldshay, North	Island		75	213	207	420
Rousay	- Island		171	390	444	834
Shapinshay	- Island		131	362	417	779
Sanday contains	Island					
Burness	- Parish	{	88	199	216	415
Cross	- Parish		116	269	296	565
Lady	- Parish		169	403	477	880
Stronsay, contains	Island					
Ladykirk	- Parish	{	53	144	171	315
St Peters, including	Parish					
Papa Stronsay	- Island		44	148	162	310
St Nicholas	- Parish	{	68	190	198	388
Westray, contains	Island					
North or Ladykirk	Parish		145	402	422	824
East	- Parish		80	248	287	535
West	- Parish		50	130	161	291
Papa Westray	- Island		49	138	159	297
Weir	- Island		16	36	44	80
Totals of North Isles			1,435	3,945	4,177	8,122
ABSTRACT.						
Totals of Mainland			2,759	6,670	8,392	15,062
Totals of South Isles			737	1,854	2,141	3,995
Totals of North Isles			1,435	3,945	4,177	8,122
Totals			4,931	12,469	14,710	27,179

Total Population of ORKNEY and ZETLAND.

In 1801, 46,824

In 1811, 46,153

In 1821, 53,124

END OF VOLUME FIRST.

COUNTY OF ALBANY				Total	
1811				1811	1812
1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30
31	32	33	34	35	36
37	38	39	40	41	42
43	44	45	46	47	48
49	50	51	52	53	54
55	56	57	58	59	60
61	62	63	64	65	66
67	68	69	70	71	72
73	74	75	76	77	78
79	80	81	82	83	84
85	86	87	88	89	90
91	92	93	94	95	96
97	98	99	100	101	102
103	104	105	106	107	108
109	110	111	112	113	114
115	116	117	118	119	120
121	122	123	124	125	126
127	128	129	130	131	132
133	134	135	136	137	138
139	140	141	142	143	144
145	146	147	148	149	150
151	152	153	154	155	156
157	158	159	160	161	162
163	164	165	166	167	168
169	170	171	172	173	174
175	176	177	178	179	180
181	182	183	184	185	186
187	188	189	190	191	192
193	194	195	196	197	198
199	200	201	202	203	204
205	206	207	208	209	210
211	212	213	214	215	216
217	218	219	220	221	222
223	224	225	226	227	228
229	230	231	232	233	234
235	236	237	238	239	240
241	242	243	244	245	246
247	248	249	250	251	252
253	254	255	256	257	258
259	260	261	262	263	264
265	266	267	268	269	270
271	272	273	274	275	276
277	278	279	280	281	282
283	284	285	286	287	288
289	290	291	292	293	294
295	296	297	298	299	300
301	302	303	304	305	306
307	308	309	310	311	312
313	314	315	316	317	318
319	320	321	322	323	324
325	326	327	328	329	330
331	332	333	334	335	336
337	338	339	340	341	342
343	344	345	346	347	348
349	350	351	352	353	354
355	356	357	358	359	360
361	362	363	364	365	366
367	368	369	370	371	372
373	374	375	376	377	378
379	380	381	382	383	384
385	386	387	388	389	390
391	392	393	394	395	396
397	398	399	400	401	402
403	404	405	406	407	408
409	410	411	412	413	414
415	416	417	418	419	420
421	422	423	424	425	426
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475	476	477	478	479	480
481	482	483	484	485	486
487	488	489	490	491	492
493	494	495	496	497	498
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511	512	513	514	515	516
517	518	519	520	521	522
523	524	525	526	527	528
529	530	531	532	533	534
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547	548	549	550	551	552
553	554	555	556	557	558
559	560	561	562	563	564
565	566	567	568	569	570
571	572	573	574	575	576
577	578	579	580	581	582
583	584	585	586	587	588
589	590	591	592	593	594
595	596	597	598	599	600
601	602	603	604	605	606
607	608	609	610	611	612
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619	620	621	622	623	624
625	626	627	628	629	630
631	632	633	634	635	636
637	638	639	640	641	642
643	644	645	646	647	648
649	650	651	652	653	654
655	656	657	658	659	660
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673	674	675	676	677	678
679	680	681	682	683	684
685	686	687	688	689	690
691	692	693	694	695	696
697	698	699	700	701	702
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709	710	711	712	713	714
715	716	717	718	719	720
721	722	723	724	725	726
727	728	729	730	731	732
733	734	735	736	737	738
739	740	741	742	743	744
745	746	747	748	749	750
751	752	753	754	755	756
757	758	759	760	761	762
763	764	765	766	767	768
769	770	771	772	773	774
775	776	777	778	779	780
781	782	783	784	785	786
787	788	789	790	791	792
793	794	795	796	797	798
799	800	801	802	803	804
805	806	807	808	809	810
811	812	813	814	815	816
817	818	819	820	821	822
823	824	825	826	827	828
829	830	831	832	833	834
835	836	837	838	839	840
841	842	843	844	845	846
847	848	849	850	851	852
853	854	855	856	857	858
859	860	861	862	863	864
865	866	867	868	869	870
871	872	873	874	875	876
877	878	879	880	881	882
883	884	885	886	887	888
889	890	891	892	893	894
895	896	897	898	899	900
901	902	903	904	905	906
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937	938	939	940	941	942
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949	950	951	952	953	954
955	956	957	958	959	960
961	962	963	964	965	966
967	968	969	970	971	972
973	974	975	976	977	978
979	980	981	982	983	984
985	986	987	988	989	990
991	992	993	994	995	996
997	998	999	1000	1001	1002

Total Population of Albany and Westerlo
In 1811 10,117
In 1812 10,117
Increase 0

Peterkin, Alexander,

Notes on Orkney and Zetland illustrative of the History, Antiquities,
Scenery and Customs of those Islands

Bd.: 1. (1822)

Edinburgh 1822

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